



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2009

Honorable Julia Sheen-Aaron
Acting Commissioner
Virgin Islands Department of Health
Sugar Estate #48
St. Thomas, Virgin Islands 00802-6746

Dear Acting Commissioner Sheen-Aaron:

This is to inform you that we have conditionally approved Virgin Islands' application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA or Part C). Our conditional approval is based on our review of the application submitted by the Virgin Islands Department of Health (VIDH or Territory) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 15, 2009, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as Enclosure A. In addition, the Territory provided the following specific assurances that it will:

1. Operate consistently with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the Territory's system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2009 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the Territory's policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, and applicable regulations, as soon as possible, and not later than the earlier of the date indicated by the VIDH in Section II of its application or June 30, 2010. Section II of the VIDH's application identifies the IDEA requirements for which the VIDH needs to amend any policies, procedures, methods and descriptions and the timelines by which the VIDH will amend its policies, procedures, methods and descriptions in order to comply with Part C and applicable regulations. Within Section II, the VIDH has included for each requirement that it cannot meet at this time, the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C and applicable regulations.

This letter also transmits the first fifty percent of your jurisdiction's IDEA Part C funds under the American Reinvestment and Recovery Act of 2009 (ARRA) (see Enclosure D- April 1, 2009 Memo and Grant Terms and Conditions).

VIDH's FFY 2009 IDEA Part C grant award is also being released subject to two sets of Special Conditions (which are Enclosures B and C to this letter and incorporated in this grant letter by this reference) that are being imposed pursuant to the U.S. Department of Education's (Department)

authority in 34 CFR §80.12. Enclosure B imposes Special Conditions on the Virgin Islands' Government for all Department grants to the Virgin Islands to ensure fiscal accountability of grant funds. Enclosure C identifies the fiscal Special Conditions imposed under Part C to ensure the timely payment to vendors who provide early intervention services to infants and toddlers with disabilities and their families in the Virgin Islands. By accepting this grant award, VIDH expressly agrees to comply with the Special Conditions identified in both Enclosures B and C.

Please note that as part of VIDH's application for FFY 2009, VIDH has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the VIDH to its FFY 2009 application or Part C policies or procedures that are application requirements, after OSEP approval, must meet the applicable public participation requirements under Part C in 34 CFR §§303.110 through 303.113 and, if they are requirements under Section II.A, must also be submitted to, and approved by, OSEP prior to the VIDH's implementation of its new or revised application, policies and procedures.

Enclosed is the Territory's regular grant award for funds currently available under the Omnibus Appropriations Act 2009 for the Part C program. These funds are for use primarily in 2009-2010 and are available for obligation by the Territory from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

In addition to these regular FFY 2009 Part C funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part C funding. The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of the Territory's ARRA IDEA Part C funds are being awarded through this grant letter to VIDH with its regular FFY 2009 IDEA Part C formula grant. The effective date of the ARRA IDEA Part C grant award is February 17, 2009. Acceptance by your jurisdiction of the ARRA IDEA Part C grant award constitutes an agreement to comply with the conditions in Enclosure D and Box 10 on the enclosed Grant Award Notification.

As specified in OSEP's June 12, 2009 e-mail, VIDH is required to submit a plan that describes the activities to be funded with the ARRA IDEA Part C funds and how VIDH will provide project management oversight and maintain separate accounting records by unique CFDA numbers of project activities and expenditures, before it will be considered eligible to receive the second 50 percent of its ARRA IDEA Part C funds. Together, the Territory's regular FFY 2009 IDEA funds and the Territory's ARRA IDEA Part C funds constitute the Territory's total FFY 2009 IDEA Part C allocation. Given the increased IDEA Part C FFY 2009 allocation to each State and Territory, States and Territories may wish to review carefully the guidance on the ARRA IDEA Part C grant awards, available at <http://www.ed.gov/fund/data/award/idea/arra/index.html>.

Section IV.B of the FFY 2009 application for Part C funds requested updated information about the Territory's restricted indirect cost rate. The VIDH indicated that it has a restricted indirect cost rate of 6.28% that expired on September 30, 2005 and that the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period FFYs 2006 through 2009. In Section IV.B of the Application, VIDH indicated it will continue to bill IDEA Part C FFY 2009 grant funds based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate is approved for FFY 2009, which may result in an adjustment of

the final audited expenditures allowed to the Part C FFY 2009 grant funds. As noted in the Department's guidance to States and Territories, applying the proposed restricted indirect cost rate to the increased FFY 2009 Part C funds due to the ARRA (which may not have been considered in the rate proposal) could result in an over-recovery of indirect costs in the current period. Please carefully review the responses to questions B-1 and B-2 in the guidance available at <http://www.ed.gov/fund/data/award/idea/arra/index.html> and direct questions regarding any adjustments to your cognizant agency or our Indirect Cost Unit. When a final restricted indirect cost rate is approved for FFY 2009, please forward to our Indirect Cost Unit and to your OSEP State Contact: (1) a copy of the final restricted rate agreement; and (2) details of adjustments made to GAPS liquidations from the provisional or prior billing rate after approval of the final rate.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant the Territory is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award for FFY 2009 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C
- Enclosure D

cc: Part C Coordinator