



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

JUL - 1 2010

Honorable Alfredo Vigil
Secretary
New Mexico Department of Health
1190 S. St. Francis Dr.
Suite N 4100
Santa Fe, New Mexico 87505

Dear Secretary Vigil:

We have conditionally approved New Mexico's application for Federal Fiscal Year (FFY) 2010 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 New Mexico Department of Health (NMDOH) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 27, 2010 and amended on June 30, 2010, including policies, procedures, methods, descriptions, assurances, and certifications identified in Section II, which is incorporated by reference to this letter as Enclosure A. In addition, the State 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 statewide system of early intervention services required by IDEA Part C and its implementing regulations is, and will remain, in effect throughout the FFY 2010 grant period; and
3. Make such changes to, and submit, for OSEP's approval, the State's policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of IDEA Part C, as soon as possible, and not later than the earlier of the date indicated by the State in Section II of its application or June 30, 2011. Within Section II of its application, the State 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 IDEA Part C.

OSEP reviewed and approved on February 2, 2010 New Mexico's revised transition policies and procedures submitted as amendments to its FFY 2009 IDEA Part C application regarding the requirements in IDEA section 637(a)(9)(A), (B), and (C), including the December 18, 2009 Memorandum of Understanding Concerning the Transition of Children between NMDOH and the New Mexico Public Education Department. OSEP also approved on August 31, 2009 New Mexico's policies and procedures to provide IDEA Part C services beyond age three. These policies were amendments to NMDOH's FFY 2009 IDEA Part C application regarding the requirements in IDEA section 635(c) and were part of NMDOH's August 31, 2009 State incentive grant under IDEA section 643(e) to implement the requirements in IDEA section 635(c).

New Mexico's FFY 2010 IDEA Part C grant award is being released subject to the FFY 2010

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Special Conditions set forth in Enclosure B, which are incorporated by this reference and which are imposed pursuant to the Department's authority in IDEA sections 616(g) and 642 and 34 CFR §80.12. These Special Conditions are imposed to ensure that all eligible children and their families timely receive the early intervention services listed on the child's individualized family service plan (timely service provision). The timely service provision requirements were the subject of Special Conditions on NMDOH's FFY 2009 IDEA Part C grant award for eight early intervention service (EIS) programs and providers. Because New Mexico did not meet those Special Conditions for seven of the eight EIS programs and providers, the Department is imposing the Special Conditions identified in Enclosure B to ensure compliance by those seven EIS programs and administrators. New Mexico must administer this award both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions in Enclosure B. Acceptance by New Mexico of this grant award constitutes an agreement by the State to comply with these Special Conditions, which require a progress report on February 1, 2011 and a final progress report on May 1, 2011.

NMDOH's FFY 2009 IDEA Part C FFY 2009 grant also contained Special Conditions to ensure compliance with the 45-day timeline requirements in 34 CFR §§303.321(e)(2); 303.322(e)(1) and 303.342(a). OSEP's May 12, 2010 letter lifted the Special Condition regarding these 45-day timeline requirements and indicated that OSEP looked forward to NMDOH's annual reporting on these requirements under Indicator 7 of its Annual Performance Report (APR). OSEP appreciates NMDOH's efforts to ensure compliance with IDEA Part C's 45-day timeline requirements.

Please note that as part of your State's application for FFY 2010, your State has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect during the FFY 2010 grant period. Before adopting a new or revised IDEA Part C policy or procedure that is required under Section II.A of the State's FFY 2010 application, the State must subject those policies and procedures to the public participation requirements in 34 CFR §§303.110 through 303.113 and receive OSEP approval for them prior to their implementation.

Enclosed is the State's FFY 2010 grant award for funds available under the Consolidated Appropriations Act, 2010 – P.L. 111-117 for the Part C program. These funds are available for obligation by States from July 1, 2010 through September 30, 2012 in accordance with 34 CFR §76.709.

Section IV.B of the FFY 2010 application for Part C funds requested updated information about each State's restricted indirect cost rate. Your State indicated NMDOH has a restricted indirect cost rate that expired on June 30, 2009, and that the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period: July 1, 2009 through June 30, 2010. In Section IV.B, NMDOH indicated it will continue to bill the IDEA Part C FFY 2010 grant based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate agreement is approved for FFY 2010, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2010 grant funds. When a final restricted indirect cost rate is approved for FFY 2010, please forward to our Indirect Cost Unit and to your

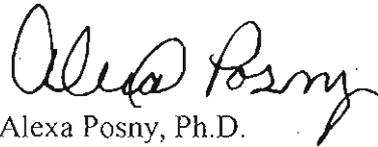
OSEP State Contact: (1) a copy of the final restricted rate agreement; and (2) details of adjustments made to GAPS liquidations from the prior billing rate after approval of the final rate.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th 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, your State 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 of FFY 2010 funds 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 may be necessary 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,



Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

Enclosures

- Enclosure A
- Enclosure B

cc: Part C Coordinator