



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

JUL - 1 2010

Honorable Richard F. Daines  
Commissioner of Health  
New York State Department of Health  
Corning Tower, Empire State Plaza, 14<sup>th</sup> Floor  
Albany, New York 12237

Dear Commissioner Daines:

We have conditionally approved New York'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 York State Department of Health (NYSDOH) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 4, May 26, June 10, and 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 has reviewed and approved New York's opt-out policy submitted under Section II.A.3 of its FFY 2010 IDEA Part C application regarding the requirements in IDEA section 637(a)(9)(A)(ii)(I) and 34 CFR §303.148(b)(1). The conditional approval for New York's FFY 2010 IDEA Part C grant is also based on NYSDOH's assurance, dated June 29, 2010 and received on June 30, 2010, in response to OSEP's June 14, 2010 memorandum and OSEP's June 16, 2010 teleconference with NYSDOH staff, in which the State specifically assured that it shall:

1. Issue a letter to early intervention service programs and providers clarifying that:
  - a. any member of the IFSP team can request a review of continuing eligibility;
  - b. such review must occur as part of a periodic IFSP review pursuant to 34 CFR §303.342(b)(1), and parents must be provided with written notice pursuant to 34 CFR §303.403. The Department [NYSDOH] will submit this letter for OSEP approval prior to sending it.

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2. Propose legislation in the New York Legislative session that commences in January 2011 that amends NYS Public Health Law section 2545(4) to comply with the IDEA Part C requirements in 34 CFR §§303.342, 303.343, 303.401(a) and 303.404(a)(2); submit a draft of legislation to OSEP for its review prior to introduction; and routinely keep OSEP apprised of progress with this legislation throughout the grant period through June 30, 2011;
3. Ensure that, throughout the period that the State uses its Federal fiscal year 2010 grant funds under Part C of IDEA, all early intervention service programs and providers in the State will comply with all requirements of IDEA Part C, including 34 CFR §§303.342, 303.343, 303.401(a) and 303.404(a)(2);
4. Provide OSEP, by September 1, 2010, a copy of the NYSDOH memorandum notifying all early intervention service programs and providers that are part of the State's IDEA Part C early intervention system of any changes that affect the provision of early intervention services under Part C, including the provisions in 34 CFR §§303.342, 303.343, 303.401(a) and 303.404(a)(2); and
5. Ensure that the statewide system of early intervention required by IDEA Part C, in 20 U.S.C. 1431-1444 and applicable regulations in 34 CFR Part 303, will be in effect throughout the FFY 2010 grant period.

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. In Section IV.B, NYSDOH indicated that it has a restricted indirect cost rate agreement that expired on March 31, 2010, and that the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period: April 1, 2010 through March 31, 2011. In Section IV.B, NYSDOH 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

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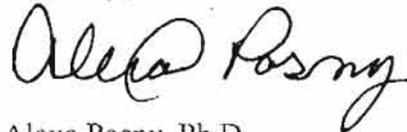
Indirect Cost Unit and to your OSEP State Contact: (1) a copy of the final restricted rate agreement; and (2) details of adjustments made to GAPS liquidations from the prior billing rate after approval of the final rate.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11<sup>th</sup> 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 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,



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

Enclosure

Enclosure A

cc: Part C Coordinator