



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

JUL - 1 2011

Honorable Catherine Torres
Secretary
New Mexico Department of Health
1190 S. Saint Francis Drive, Suite N 4100
Santa Fe, New Mexico 87502

Dear Dr. Torres:

We have conditionally approved New Mexico's application for Federal Fiscal Year (FFY) 2011 funds under Part C of the Individuals with Disabilities Education Act (IDEA 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 26, 2011, 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 IDEA 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 2011 grant period; and
3. Make such changes to, and submit, as necessary, 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, 2012. 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.

The conditional approval of New Mexico's IDEA Part C FFY 2011 grant award is also based on OSEP's review and approval of the State's policies regarding serving biologically and environmentally at-risk infants and toddlers with disabilities, which policies were submitted under Section II.A.6 of the IDEA Part C FFY 2011 application.

New Mexico's IDEA Part C FFY 2010 grant award was subject to Special Conditions to ensure the timely provision of services. OSEP's June 20, 2011 letter responding to the State's Annual Performance Report (APR) lifted these Special Conditions regarding timely service provision and indicated that OSEP looked forward to NMDOH's annual report on these requirements

under Indicator 1 of its FFY 2010 APR due February 1, 2012. OSEP appreciates NMDOH's efforts to ensure compliance with IDEA Part C's timely service provision requirements.

Please note that as part of your State's application for FFY 2011, 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 2011 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 2011 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 2011 grant award for funds currently available under the Department of Defense and Full-Year Continuing Appropriations Act, 2011 -- P.L. 112-10 for the IDEA Part C program. These funds are available for obligation by States from July 1, 2011 through September 30, 2013 in accordance with 34 CFR §76.709.

Section IV.B of the State FFY 2011 application for Part C funds requested updated information about each State's restricted indirect cost rate. Your State indicated that NMDOH has a provisional restricted indirect cost rate of 3.6%, which is applied to the first \$25,000 of contracts that expired on June 30, 2011, and the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the FFY 2011 grant period. In Section IV.B, your agency indicated it will continue to bill the IDEA Part C FFY 2011 grant based on this provisional restricted indirect cost rate until a final restricted indirect cost rate agreement is approved for FFY 2011, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2011 grant funds. When a final restricted indirect cost rate is approved for FFY 2011, 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/G-5 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 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 2011 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 IDEA Part C.

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As a reminder, within 30 days of July 1, 2011, all prime recipients of IDEA (Part B or Part C) funds must report subaward information as required by the Federal Financial Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. FFATA guidance is found at <http://www2.ed.gov/policy/gen/leg/recovery/rms-web-conferences.html>. Please contact your State's Recovery Act Facilitator if you have further questions.

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

Sincerely,

A handwritten signature in black ink that reads "Melody Musgrove". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosure

Enclosure A

cc: Part C Coordinator