



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

October 21, 2013

Commissioner Veronda L. Durden
Texas Department of Assistive and Rehabilitative Services
4800 North Lamar Boulevard
Austin, Texas 78756

Dear Commissioner Durden:

We have conditionally approved Texas' application for Federal fiscal year (FFY) 2013 funds under Part C of the Individuals with Disabilities Education Act (IDEA Part C). The effective date of the grant award is October 11, 2013. Our conditional approval is based on our review of the IDEA Part C application, submitted by the Texas Department of Assistive and Rehabilitative Services (DARS) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 19, June 25, August 23, and October 11, 2013.

Our conditional approval of the State's FFY 2013 IDEA Part C grant is also based on the State's policies, procedures, methods, descriptions, assurances, and certifications identified in Section II.A, II.B, and II.C, which is incorporated by reference to this grant award letter as Enclosure A. Our approval is also based on the State's certification in Section II.D of its FFY 2013 IDEA Part C application, in which section the State certifies under 34 CFR §76.104 that it will:

1. Operate throughout the period of the FFY 2013 grant award consistently with the requirements of the IDEA as found in 20 U.S.C. §§ 1431 through 1443 and the final regulations in 34 CFR Part 303 (as published on September 28, 2011); and
2. Make such changes to existing 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.A and II.B of its application or June 30, 2014.

Our conditional approval is also based on OSEP's approval of the policies and procedures submitted by DARS under Section II.A.9 of the Part C application on December 4, 2012. Approval is reflected in OSEP's June 25, 2013 memo to DARS.

The conditional approval for Texas' FFY 2013 IDEA Part C grant is also based on the October 11, 2013 assurance from DARS in which the State specifically assured that it shall:

- (1) Make all changes necessary to the State's system of payment (SOP) Policy pursuant to OSEP's September 27, 2013 memorandum and attached checklist [which was attached to OSEP's June 25, 2013 memorandum]¹, to comply with the IDEA Part C requirements, including the requirements in 34 CFR §§303.[510, 303.520](a)(2), 303.520(b)(2), and 303.521(a)(4)(iv) (as published on September 28, 2011), and submit to OSEP those new and/or revised regulations that are required to be submitted under Section II.A of the

¹ The language in brackets references language that was inadvertently omitted from DARS' assurance, such as the checklist which was attached to OSEP's June 25, 2013 memorandum instead of OSEP's September 27, 2013 memorandum (which had no checklist).

IDEA Part C grant application, as soon as they are finalized, but no later than June 30, 2014;

- (2) Submit to OSEP, by November 1, 2013, a copy of the draft revisions to the Texas Administrative Code prior to the public comment period, and its revised SOP policy forms, to ensure compliance in the interim (as reflected in OSEP's September 27, 2013 memorandum), and submit to OSEP promptly after the public comment period, any subsequent revised drafts of the State's SOP that are publicly circulated;
- (3) Provide OSEP, by January 1, 2014, a copy of the memorandum notifying all EIS [early intervention service] programs and providers that are part of the State's IDEA Part C early intervention system of the changes described in OSEP's September 27, 2013 memorandum that affect the provision of early intervention services under IDEA Part C; and
- (4) Ensure that the statewide system of early intervention required by IDEA Part C, in 20 U.S.C. §§ 1431 through 1444 and the final regulations in 34 CFR Part 303, will be in effect throughout the FFY 2013 grant period.

As part of the Texas' October 11, 2013 assurance cited above, DARS confirmed in its letter dated October 10, 2013 that it "provides the parent protections described in 34 CFR §303.520(b)(2)... For those private insurance plans for which the protections may not or do not apply, Texas will obtain parental consent or not use those plans to pay for IDEA Part C services."

As part of your State's application for FFY 2013, your State has made an assurance, under Section II.C.2 of its FFY 2013 application and pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect during the FFY 2013 grant period.

Before adopting a new or revised IDEA Part C policy or procedure that is required under Part C of the IDEA or under the final regulations in 34 CFR Part 303, the State must subject those policies and procedures to the public participation requirements in 34 CFR §303.208 and, for those policies and procedures specifically referenced in 34 CFR §303.101(c), receive OSEP approval prior to their implementation.

Enclosed is the State's FFY 2013 grant award for funds currently available under the Consolidated and Further Continuing Appropriations Act, 2013 -- P.L. 113-6 for the IDEA Part C program. These funds are available for obligation by States from the effective date of the grant award, October 11, 2013, through September 30, 2015 in accordance with 34 CFR §76.709.

Section IV.B of the State FFY 2013 application for Part C funds requested updated information about each lead agency's restricted indirect cost rate. Your State indicated in Section IV.B that DARS has a predetermined restricted indirect cost rate of (ten percent) 10% that expired on August 30, 2013 and the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the FFY 2013 grant period. In Section IV.B, DARS indicated it will continue to bill the IDEA Part C FFY 2013 grant based on this predetermined restricted indirect cost rate until a final restricted indirect cost rate agreement is approved for FFY 2013, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2013 grant funds. When a final restricted indirect cost rate is approved for FFY 2013, 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 any adjustments made to GAPS/G-5 liquidations as a result of the 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 2013 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 IDEA Part C.

As a reminder, all prime recipients of IDEA (Part B or Part C) funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <http://www2.ed.gov/policy/gen/leg/recovery/rms-web-conferences.html>. Please contact your State’s Fiscal Accountability Facilitators 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,



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

Enclosure

Enclosure A

cc: Part C Coordinator