

July 1, 2016

Honorable K. Lynn Gallagher
Deputy Cabinet Secretary
New Mexico Department of Health
1190 S. St. Francis Drive, Suite N 4100
Santa Fe, New Mexico 87502

Dear Deputy Secretary Gallagher:

We have approved New Mexico's application for Federal fiscal year (FFY) 2016 funds, under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Our approval is based on our review of the IDEA Part C application, submitted by the New Mexico State Department of Health/Developmental Disabilities Support Division (NMDOH) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 12, 2016.

Our approval of the State's FFY 2016 IDEA Part C grant includes approval of 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 2016 application that the State's provisions meet the requirements of IDEA Part C as found in 20 U.S.C. §§1431 through 1443 and the regulations in 34 CFR Part 303, and that the State will operate its Part C program in accordance with all of the IDEA Part C requirements including required policies, procedures, methods, descriptions, assurances and certifications. See 34 CFR §76.104.

Enclosed is the State's FFY 2016 grant award for funds currently available under the Consolidated Appropriations Act, 2016, P.L. 114-113 for the IDEA Part C program. These funds are available for obligation by IDEA grant recipients July 1, 2016 through September 30, 2018 in accordance with 34 CFR §76.709.

Section IV.B of the IDEA Part C FFY 2016 application requested updated information about how your lead agency implements the restricted indirect cost rate requirements in 34 CFR §303.225(c), which require indirect costs to be applied on a restricted basis or to not be charged to Federal IDEA Part C grant funds. Your State indicated in Section IV.B that NMDOH has a restricted indirect cost rate agreement that has been approved by NMDOH's cognizant Federal agency and is effective through June 30, 2016. However, the agreement provided by NMDOH on September 3, 2015, indicated that it has an approved indirect cost rate of 3.3% but does not indicate that this rate is restricted. Under 2 CFR §200.210(a)(15), the IDEA Part C FFY 2016 grant must identify the approved rate.

In addition, as stated in your Federal IDEA Part C 2015 grant award letter, under 34 CFR §303.225(c), the approved rate must be applied on a restricted basis or not be charged to Federal IDEA Part C grant funds.

Given that NMDOH does not have an approved restricted indirect cost rate, as was the case with your Federal IDEA Part C 2015 grant, your State may not charge indirect costs to its FFY 2016 grant until such rate is approved on a restricted basis. Kindly contact your cognizant Federal agency to submit a proposed restricted indirect cost rate proposal. Once a restricted indirect cost rate agreement is approved for the IDEA Part C FFY 2016 grant award period, please submit a copy of the revised restricted indirect cost rate agreement to our Indirect Cost Unit and to your OSEP State Lead and request approval of the applicable 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 2016 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.

If your State revises those IDEA Part C policies or procedures that are required under Part C of the IDEA or the 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 receive OSEP approval for those policies and procedures referenced in 34 CFR §303.101(c) prior to their implementation.

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 Facilitator if you have further questions.

Page 3 – Lead Agency Director

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

Sincerely,

/S/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

Enclosure

Enclosure A

cc: Part C Coordinator