

July 1, 2018

Honorable Howard Zucker, M.D., J.D.
Commissioner
Corning Tower, Empire State Plaza, 14th Floor State: NY
New York State Department of Health
Albany, New York 12237

Dear Commissioner Zucker:

We have conditionally approved New York's application for Federal fiscal year (FFY) 2018 funds under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Our conditional approval is based on our review of the IDEA Part C application, submitted by the New York State Department of Health (NYSDOH) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 7, 2018 and June 26, 2018.

Our conditional approval of the NYSDOH's FFY 2018 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. OSEP's conditional approval of the State's FFY 2018 IDEA Part C application is also based on our approval of the NYSDOH Bureau of Early Intervention's System of Payments and NYSDOH Bureau of Early Intervention's Parent Notice Regarding Insurance, submitted under Section II.A.3A. by the State on April 20, 2016, February 2, 2017 and September 19, 2017, and approved as part of this FFY 2018 IDEA Part C grant award.

Our conditional approval is also based on the NYSDOH's certification in Section II.D of its FFY 2018 IDEA Part C application, in which the State certifies under 34 CFR §76.104 that it will:

1. Operate throughout the period of the FFY 2018 grant award consistently with the requirements of the IDEA Part C as found in 20 U.S.C. §§1431 through 1443 and the regulations in 34 CFR Part 303; 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 either the date indicated by the State in Section II.A or B of its application or June 30, 2019 whichever is earlier.

Enclosed is the State's FFY 2018 grant award for funds currently available under the Department of Education Appropriations Act, 2018, Title III of Division H, P.L. 115-141, for the IDEA Part C program. These funds are available for obligation by States from the effective date of the grant award, July 1, 2018 through September 30, 2020 in accordance with 34 CFR §76.709.

Under IDEA Section 605, and 2 CFR Part 200, and 34 CFR §303.104, the State must obtain prior approval to charge the following expenses as direct costs: (1) equipment (2 CFR §200.33 and 34 CFR §303.104); (2) participant support costs (2 CFR §200.75); (3) construction/renovation (2 CFR §200.12(b) and 34 CFR §303.104); and (4) rent (2 CFR §200.465 and 34 CFR §303.225(d)).

The State did not identify any such costs in Section III of its grant application. If the State plans to use its FFY 2018 IDEA Part C grant funds for such costs, it must submit a request for prior approval to which OSEP will respond separate from the grant letter.

Section IV.B of the IDEA Part C FFY 2018 application requested updated information about how your lead agency implements the restricted indirect cost rate requirements in 34 CFR §303.225(c). Your State indicated in Section IV.B that NYSDOH had a restricted indirect cost rate of 5.3% that expired on March 31, 2018, and the State lead agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the FFY 2018 grant period. In Section IV.B, your lead agency also indicated it will continue to bill IDEA Part C FFY 2018 grant funds based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate agreement is approved for FFY 2018. Under 2 CFR §200.210(a)(15), by accepting this IDEA Part C FFY 2018 grant, your State lead agency will continue to bill the IDEA Part C FFY 2018 grant funds based on this previously approved restricted indirect cost rate, to the extent authorized by your cognizant Federal agency, until a final restricted indirect cost rate agreement is approved for FFY 2018. When a final restricted indirect cost rate is approved by your cognizant Federal agency for FFY 2018, you must forward a copy of it to the Department’s Indirect Cost Group and to your OSEP State Lead.

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 2018 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 adopts a new or revised IDEA Part C policy or procedure that is required under Part C of the IDEA or under the regulations in 34 CFR Part 303, it 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.

As a reminder, all prime recipients of IDEA 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