



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

JUL - 3 2006

Honorable Michelle Lujan Grisham
Secretary
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110

Dear Secretary Grisham:

This is to inform you that we have conditionally approved New Mexico's Application, including policies, procedures, methods, descriptions, and assurances, for Federal Fiscal Year (FFY) 2006 under Part C of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the Part C Application for FFY 2006, including the policies, procedures, methods, descriptions, assurances, certifications, and submission statement submitted by the New Mexico Department of Health to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 24, 2006 in which it assures that it will:

1. Operate consistent with the Part C requirements of PL 108-446 and its applicable regulations in 34 CFR Part 303;
2. Ensure that the Statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2006 grant period; and
3. Make such changes to, and submit for OSEP's approval, existing policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, as amended, 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, 2007. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies, procedures, methods and descriptions and the timelines by which the State will amend any policies, procedures, methods and descriptions in order to comply with Part C of the IDEA. Within Section II, the State has included 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 Part C of the IDEA, as amended.

Enclosed is the State's grant award for funds currently available under the Department of Education FFY 2006 Appropriations Act for the Part C program. These funds are for use primarily in the fiscal year 2006-2007 and are available for obligation by States from July 1, 2006 through September 30, 2008.

The New Mexico FFY 2006 IDEA Part C grant award is being released subject to FFY 2006 Special Conditions, as set forth in Enclosure B, that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP determined that New Mexico was not ensuring that: (1) all infants and toddlers referred to Part C have evaluations and assessments

and an initial Individualized Family Service Plan (IFSP) meeting within 45 days of referral to the early intervention program (45-day timeline), see 34 CFR §§303.321(e)(2), 303.322(e)(1), and 303.342(a); and (2) all eligible children and their families receive the early intervention services listed on the child's IFSP as required by 34 CFR §303.342(e) (service provision).

New Mexico's failure to correct noncompliance related to Part C's 45-day timeline and service provision requirements resulted in the Department imposing FFY 2005 Special Conditions contained in the State's FFY 2005 Part C grant award. Because New Mexico did not meet those Special Conditions, the Department is imposing Special Conditions on the State's FFY 2006 grant award under Part C. The reasons for doing so and the specific conditions are detailed in Enclosure B of this letter, which is incorporated into the terms of this grant letter. New Mexico must administer the award both in keeping with applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by New Mexico of this grant award constitutes an agreement by the State to comply with the Special Conditions, which require a report by February 1, 2007 and a final progress report by June 1, 2007 with data demonstrating compliance with these two requirements.

In addition to the special conditions, the enclosed grant award for FFY 2006 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 are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

Please note that as part of your State's Application for FFY 2006, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2006 grant period. Any changes made by the State to its FFY 2006 Application or its Part C policies, after OSEP's approval, must meet the applicable public participation requirements in Part C of the IDEA and may also need to be submitted to OSEP for approval prior to implementation.

Section IV.B of the FFY 2006 application for Part C funds requested updated information about each State's restricted indirect cost rate. In Section IV.B of the Application, the State indicated it will bill the Part C FFY 2006 grant an indirect cost rate of 2.5% until a restricted indirect cost rate or cost allocation plan is approved for FFY 2006, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2006 grant funds. Under 34 CFR §§76.560 through 76.569, your State lead agency is required to use a restricted indirect cost rate under Part C or not charge indirect costs to Part C grant funds. If the rate applied by your agency is not restricted, the State may incur audit liability. Please contact our Indirect Cost Unit and submit a restricted indirect cost rate proposal or your agency's cost allocation plan by December 1, 2006. When a final restricted indirect cost rate is approved for FFY 2006, please forward to our Indirect Cost Unit: (1) a copy of the final rate agreement and (2) details of adjustments made to Grant Administration Payment System liquidations from the provisional or prior billing rate after approval of the final rate.

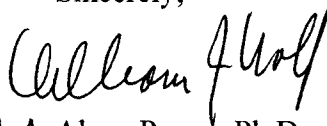
Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Section 606 provides that each recipient of assistance under IDEA make positive efforts

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to employ and advance in employment qualified individuals with disabilities. Therefore, by accepting this grant a 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.

OSEP staff is ready to provide helpful technical assistance should you request it. We look forward to working with NMDOH on these matters to ensure the success of the program and appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,



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

Enclosures

Enclosures A and B

cc: Andy Gomm
Part C Coordinator