



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

JUL 2 2008

Honorable Alfredo Vigil, M.D.  
Secretary  
New Mexico Department of Health  
1190 South St. Francis Drive  
P.O. Box 26110  
Santa Fe, New Mexico 87502

Dear Dr. Vigil:

This is to inform you that we have conditionally approved New Mexico's Application for Federal Fiscal Year (FFY) 2008 under Part C of the Individuals with Disabilities Education Act (IDEA). Our conditional approval is based on review of the application submitted by the Department of Health to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 16, 2008, (and amended on June 18, 2008) including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided the following specific assurances that it will:

1. Operate consistent with the 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 Part C and its implementing regulations is in effect throughout the FFY 2008 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 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, 2009. Section II of the State's application identifies the IDEA statutory sections for which the State needs to amend any policies, procedures, methods and descriptions and the timelines by which the State will amend its 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.

OSEP imposed Special Conditions on New Mexico's Part C FFY 2007 grant award requiring New Mexico to ensure that: (1) all infants and toddlers referred to Part C have evaluations and assessments and an initial Individualized Family Service Plan (IFSP) meeting conducted 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). Because New Mexico did not meet those Special Conditions, New Mexico's FFY 2008 IDEA Part C grant award is being released subject to the FFY 2008 Special Conditions set forth in Enclosure B, which are incorporated by this reference and which are imposed pursuant to the Department's authority in 34 CFR §80.12. New Mexico must administer this award both in keeping with the 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 progress report on November 1, 2008 and a final progress report on February 2, 2009.

In its June 2008 progress report, the State provided the information regarding its general supervision system that was requested in OSEP's March 17, 2008 verification/focused monitoring letter to New Mexico.

Enclosed is the State's grant award for funds currently available under the Department of Education Appropriations Act for FFY 2008 for the Part C program. These funds are available for obligation by States from July 1, 2008 through September 30, 2010.

The enclosed grant award for FFY 2008 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 2008, 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 2008 grant period. Any changes made by the State to its FFY 2008 application or Part C policies or procedures that are application requirements, after issuance of this grant award, must meet the applicable public participation requirements under Part C of the IDEA in 34 CFR §§303.110 through 303.113 and if they are requirements under Section II.A must be submitted to, and approved by, OSEP prior to the State's implementation of its new or revised application, policies and procedures.

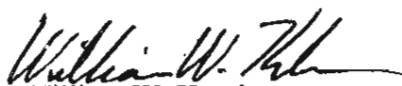
Section IV.B of the FFY 2008 application for Part C funds requested updated information about each State's restricted indirect cost rate. As required by OSEP's March 17, 2008 verification/focused monitoring letter to New Mexico, the State reported in its FFY 2008 Part C Application that it did not charge any indirect costs to its FFY 2007 Part C grant funds. NMDOH also indicated in its FFY 2008 Part C application that NMDOH has a provisional restricted indirect cost rate of 4.9% beginning on July 1, 2008 and that NMDOH is in the process of negotiating a final restricted indirect cost rate effective beginning in FFY 2008. In Section IV.B of the Application, the State lead agency indicated it will continue to bill the Part C FFY 2008 grant based on this provisional restricted indirect cost rate until a final restricted indirect cost rate is approved for FFY 2008, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2008 grant funds. When a final restricted rate indirect cost rate is approved for FFY 2008, please forward to our Indirect Cost Unit: (1) a copy of the final rate agreement and (2) details of adjustments made to GAPS liquidations from the provisional or prior billing rate after approval of the final rate.

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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 to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. 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 in programs assisted under the IDEA.

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

Sincerely,



William W. Knudsen

Acting Director

Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

cc: Part C Coordinator