



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
 Governor

John A. McNeal
 Director

MEMORANDUM

DATE: March 29, 2019

TO: Ms. Susan Campbell
 Birth to Three, DMS/DHSS

FROM: *A. J. Webb*
 J. Todd Webb- Chairperson
 State Council for Persons with Disabilities

RE: 22 DE Reg. 791 [DHSS Annual Grant Application for Birth to Three federal funding under part C of the IDEA Act (March 1, 2019)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services' (DHSS') Annual Grant Application for Birth to Three federal funding under part C of the IDEA Act. The notice was published as 22 DE Reg. 791 in the March 1, 2019 issue of the Register of Regulations. SCPD has the following observations.

The federal Part C grant is administered by the Office of Special Education Programs (OSEP), and provides the State funding to maintain and implement a system of early intervention services for infants and toddlers with disabilities or developmental delays. 34 CFR 303.100. Title 34, Part 303 of the implementing regulations detail what must be included in each State's grant application. The application consists of three main parts: Section II-A, which requires the State to indicate whether it is providing OSEP the policies, procedures, methods or descriptions ("policies, etc.") that are required by 34 CFR 303.201- 212; Section II-B, which asks the State to make assurances about its ability to comply with various requirements; and Section III, which requires to State's to outline how it proposes to spend federal funds.

Application Section II-A

In Delaware's FFY 2018 application, the State indicated it could provide OSEP all Part II-A required policies, etc., and that all these policies, etc., were already on file with OSEP. The FFY 2018 application also stated Delaware could make all Part II-B assurances.

requirements since OSEP had Delaware's previous year's policies, etc. on file and there have not been any federal regulatory changes that would have rendered Delaware's policies, etc. insufficient. The DLP was informed that incorrect boxes were selected in Part II-A, and DHSS will promptly release a corrected application. Delaware is able to satisfy all Part II-A requirements.

Application Section II-B

The FFY 2019 application differs from the 2018 application in that Delaware will not be making all of the Part-B assurances this year. If a State is unable to make an assurance, it must provide anticipated date no later than June 30, 2020 by which it will bring itself into compliance. This year, Delaware will not make the following assurances:

- State rules, regulations, policy, and procedure about early childhood intervention for infants and toddlers with disabilities "conform to the purposes and requirements of 34 CFR Part 303." See Section II-13 of the FFY 2019 application. Delaware's estimated completion date is June 30, 2020.
- There are policies and procedures "relating to establishment and maintenance of qualification standards to ensure that personnel... are appropriately and adequately trained." See Section II-16 of the FFY 2019 application. Delaware's estimated completion date is June 30, 2020.
- Procedural safeguards satisfy the federal regulations. See Section II-18 of the FFY 2019 application. Procedural safeguards include confidentiality of information, parental consent and notice, and dispute resolution and hearing rights. Subpart E of 34 CFR Part 303. Delaware's estimated completion date is June 30, 2020.
- Policies and procedures exist to ensure "traditionally underserved groups, including minority, low-income, homeless and rural families and children with disabilities who are wards of the state" are engaged in "planning and implementation" of Part C and these families can obtain "culturally competent services" in their area. See Page II-20 of the FFY 2019 application. The estimated completion date is June 30, 2020.
- The State has a policy that requires it make "good-faith efforts" to recruit qualified personnel to provide early intervention services to infants and toddlers with disabilities, including in areas of the State where there is a personnel shortage. See Page II-21 of the FFY 2019 application.

DLP spoke with the Part C Coordinator to ask why Delaware would not be making all of its assurances this year since the State was able to last fiscal year and the federal regulations have not changed since 2011. Based on that call, it appears the State has declined to make the aforementioned assurances, not because it cannot meet the minimum federal requirements, but because it wants to strengthen and change its policies. For instance, Delaware's procedural safeguards have not been updated since the 1990s, and the State wishes to review and update it before making assurances.

Delaware does not risk losing federal dollars this year by failing to make all assurances. Rather, Delaware would be granted conditional approval, and would be required to indicate in next year's application whether it resolved the issues identified in this year's application.

Assurance number four asks the state to assure its early intervention system includes the “components” in 34 CFR §§303.11 through 303.126. Delaware has indicated it is not able to provide assurances it complies with §§ 303.119(a)-(d), 303.123. Perhaps it has checked yes to that question because it can assure that its policies do at least minimally address CFR §§ 303.111 through 303.126 requirements, even if the State cannot assure that we are actually in compliance with these requirements.

Application Section III

Section III details how much funding the State is requesting, and how the State proposes to spend those funds. Delaware is seeking roughly the same amount of money as it did in FFY 2018; however, there are some substantial differences in how the State proposes to spend those federal dollars.

In FFY 2018, Delaware requested \$581,357 for the provision of direct early intervention services. Direct services include the provision of developmental services (such as treatment and assessment) and physical, occupational, and speech and language therapies. In FFY 2018, Delaware requested approximately \$214,000 for developmental services, \$102,000 for physical therapy; \$81,000 for occupational therapy, and \$181,000 for speech and language therapy.

In the FFY 2019 application, Delaware requested \$128,784 for direct services- approximately \$51,000 for developmental services, \$18,000 for physical therapy, \$12,000 for occupational therapy, and \$45,000 for speech and language therapy.

This year, the State proposes to spend more federal dollars on “maintenance and implementation activities” than it did last year (FFY 2018: approximately \$900,000 compared with 1.4 million for FFY 2019). Some of the largest differences between FFY 2018 and 2019 in proposed spending are as follows: approximately \$155,000 more proposed for contractors that evaluate infant and toddler eligibility, \$110,000 for computer and technology expenses, \$100,000 for contractual services on policy development, and \$40,000 on child find and public awareness efforts.

SCPD is requesting the following clarifications:

- What the State will be doing this year to ensure it can make all assurances next year, and if it is planning on revising and strengthening policies, how the public may offer input.
- Why no answer is provided to Assurance 4 on page II-13.
- Why the State has made Assurance 2, based on its answers in other areas of Section II-B.
- Why some answer choice boxes are blacked out.
- How Delaware will be funding direct support services, since it is proposing to use significantly less federal dollars to fund them.

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations on the Grant application.

cc: Lisa Bond, Director of DMS
Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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