



Governor's Advisory Council for Exceptional Citizens (GACEC) 516 West Loockerman St., Dover, DE 19904  
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April 9, 2020

Susan Campbell  
DHSS - Division of Management Services  
Birth to Three Early Intervention Program  
1901 N DuPont Hwy  
New Castle, DE 19720

**RE: 23 DE Reg. 780 [DHSS Birth to Three Annual Federal Funding Grant Application  
General Notice Regulation (March 1, 2020)]**

Dear Ms. Campbell:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Delaware Health and Social Services (DHSS) Annual Grant Application for Birth to Three federal funding under part C of the Individuals with Disabilities Act (IDEA). The notice was published as 23 DE Reg. 780 in the March 1, 2020 issue of the Register of Regulations. We apologize for the lateness of our comments but were unable to get this information to you earlier due to changes created by the COVID-19 pandemic. We hope you understand and are able to accept the following observations.

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 the State to outline how it proposes to spend federal funds.

**Application Section II-A**

First, in the FFY 2020 application for Delaware, the State makes all but one assurance that it satisfies the Part II-A requirements. In the FFY 2019 application, Subpart C-9 was marked "Yes; On File." In the FFY 2020 application, this Subpart has been left blank. *See* Section II-6. The Council would like clarification on whether this Subpart was unintentionally left blank or whether the State is no longer making this assurance.

Second, the FFY 2020 application includes two State Policies and Procedures that are optional and were previously marked as "N/A" that have now been marked "Yes; On File." Council would like additional clarification on this section. The first, Subpart C-3(a), requires that each application

include any policies or procedures adopted by the State as its system of payments. Those policies and procedures must meet the requirements in §§303.510, 303.520 and 303.521 (regarding the use of public insurance or benefits, private insurance, or family costs or fees) if the State has adopted a system of payments. *See* Section II-3 of the FFY 2020 Application. The second, Subpart C-5, requires that if the State provides services under Part C to at-risk infants and toddlers through the statewide system, the application must include the definition of at-risk infants and toddlers with disabilities who are eligible in the State for services under Part C (consistent with §§303.5 and 303.21(b)); and a description of the early intervention services provided under Part C to at-risk infants and toddlers with disabilities who meet the definition described in §303.204(a). *See* Section II-5 of the FFY 2020 Application.

#### Application Section II-B

Third, the FFY 2020 application has provided assurance for nearly all of the components of Subpart B in Section II-B. Subpart B-4 is shaded in, but does not indicate a yes or no. *See* Section II-13. Council would like clarification on whether this assurance has been made.

Fourth, the initial FFY 2019 application did not make several assurances that it had made in previous applications. Based on an email exchange between you and representatives from the Disabilities Law Program (DLP) following the initial submission for FFY 2019, the Office of Special Education Programs (OSEP) and their Office of General Counsel contacted the State and provided instructions to change several of the assurances from "No" to "Yes." Based on those changes, only two assurances needed to be addressed in the FFY 2020 application. They included: (1) the optional assurance establishing "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, and; (2) the assurance which states "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." In the FFY 2020 application, the State provides assurance for these two remaining components.

#### 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 2019 and there are no substantial differences in how the State proposes to spend those federal dollars for FFY 2020.

In conclusion, Council would like clarification on the two areas mentioned above: Does the State intend to provide an assurance for Section II-A Subpart C-9. (*See* Section II-6.), along with the rationale for that decision and does the State intend to provide an assurance for Section II-B Subpart B-4. (*See* Section II-13.), along with the rationale for that decision?

Thank you for your time and consideration of our observations and questions on the Grant application. Please feel free to contact me or Wendy Strauss should you have any questions.

Sincerely,

*Ann C Fisher*

Ann C. Fisher  
Chairperson

ACF: kpc