



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 3 2006

Honorable Jack T. O'Connell
Superintendent of Public Instruction
California Department of Education
1430 N Street, Suite 5602
Sacramento, CA 95814

Honorable James E. Tilton
Acting Secretary
California Department of Corrections and Rehabilitation
1515 S Street, Suite 502 S
Sacramento, CA 95814

Dear Superintendent O'Connell and Acting Secretary Tilton:

This is to inform you that we have conditionally approved California's Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2006 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's application submitted by the California Department of Education (CDE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 24, 2006, and amended on June 5, 2006 and June 20, 2006, in which it assures that it will:

1. Operate consistent with the Part B requirements of PL 108-446 and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than July 1, 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 and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

Our determination that you are eligible for a conditional approval is also based on our receipt of the June 13, 2006 letter from CDE to OSEP, in which California provided the following assurance that:

1. As soon as possible, but no later than June 30, 2007, California will make every reasonable effort to enact all of the changes to its statutes, regulations, policies and procedures, that are necessary to make them consistent with the requirements in 34 CFR §§300.560-300.577 or the applicable provisions in the implementing regulations for Part B of IDEA in 34 CFR, Part 300

regarding consent for disclosure of education records, as discussed in the May 4, 2006 conference call and will provide the Secretary with a copy of the revised documents showing those changes no later than June 30, 2007;

2. Throughout the period of the State's grant awards for fiscal year 2006, under Part B of the IDEA, all public agencies in the State will comply with all of the requirements of Parts A and B of the IDEA and its implementing regulations; and
3. California will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agency provision of special education and related services that the OSEP requires as a result of its review of the State's eligibility documents.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2006 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2006-2007 and are available for obligation by States from July 1, 2006 through September 30, 2008.

Please note that as part of your Eligibility Documents 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 periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2006. Of the \$10,582,960,540 appropriated for Section 611 in FFY 2006, \$5,158,760,540 is available for awards on July 1, 2006, and \$5,424,200,000 will be available on October 1, 2006.

For FFY 2006, the final appropriations for the Grants to States program and the Preschool Grants program represent a slight decrease below the amounts for FFY 2005. The IDEA specifies how funds are allocated under these programs when the amounts appropriated are less than for the prior Federal fiscal year. At the level of decrease for the Grants to States program, each State is first allocated the amount it received for FFY 1999. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between FFYs 1999 and 2005, as compared to the total of such increases for all States. At the level of decrease for the Preschool Grants program, each State is first allocated the amount it received for FFY 1997. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between FFYs 1997 and 2005, as compared to the total of such increases for all States.

Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611

funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table III in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

As detailed in Enclosure D of this letter, the Department has determined that the State remains a high risk grantee in regard to the provision of special education and related services to eligible individuals with disabilities who are convicted as adults and incarcerated in adult prisons, and Enclosure D sets forth a special condition relating to that issue. The Department's continuing imposition of a Special Condition relating to the provision of services in adult prisons is based upon the State's failure to fully address the California Department of Corrections' (CDC's) failure to ensure that a free appropriate public education (FAPE) is available to eligible inmates with disabilities in adult correctional facilities.¹

Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current." We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the State may not expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under section 608(a) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations (20 U.S.C. 1407(a)(2)). A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its Part B application for this purpose.

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 B.

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. 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

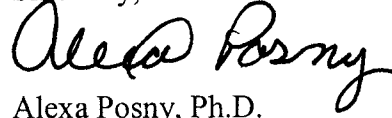
¹ On June 5, 1997, in his Executive Order W-155-97, former Governor Wilson transferred from CDE to CDC the responsibility for ensuring that the requirements of the IDEA are met with respect to eligible youth who are convicted as adults under State law and are incarcerated in adult prisons.

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positive efforts are made to employ and advance employment of qualified individuals with disabilities.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large, stylized 'A' and 'P'.

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

Enclosure C

Enclosure D

cc: Mary Hudler
Director of Special Education