



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

JUL 3 2006

Honorable June St. Clair Atkinson  
Superintendent of Public Instruction  
North Carolina Department of Public Instruction  
301 North Wilmington Street  
Raleigh, North Carolina 27601-2825

Dear Superintendent Atkinson:

This is to inform you that we have conditionally approved North Carolina'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 North Carolina Department of Public Instruction to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 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.

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).

OSEP previously directed the State to submit: (1) as part of its FFY 2003 Annual Performance Report (APR) an update, including current supporting data and analysis, regarding its progress in correcting the noncompliance related to inviting students to individualized education program (IEP) meetings where a purpose is the consideration of transition service needs or needed transition services (34 CFR §300.344(b)(1)) and transition-related content of IEPs (34 CFR

§300.347(b)); and (2) by July 9, 2005, documentation showing that the State corrected both areas of noncompliance. According to the State Performance Plan (SPP) submitted on December 2, 2005, and North Carolina's December 24, 2005 progress report, the overall compliance rate for inviting students to transition meetings was 83 percent, and the overall compliance rate for transition-related content of IEPs was 79 percent. OSEP required North Carolina to provide data demonstrating compliance with these requirements by June 1, 2006. Data provided in the May 30, 2006 progress report demonstrate significant progress in correcting the previously identified noncompliance based on a compliance rate of 90.2 percent in both of these areas. In the FFY 2005 APR, due February 1, 2007, the State must provide updated documentation regarding the State's progress in ensuring full compliance in these areas.

The State's 2001 Self-Assessment included data showing noncompliance with the due process hearing timeline requirements of 34 CFR §300.511(a) and (c). The FFY 2003 APR and the October 24, 2005 verification letter documented continuing noncompliance and required the State to provide either evidence of compliance by December 24, 2005 or a plan to ensure compliance, with an additional progress report by April 14, 2006. In Table B of OSEP's February 27, 2006 response to North Carolina's SPP dated December 2, 2005, OSEP noted that the State reported a 50 percent level of compliance with the due process hearing timeline requirements at 34 CFR §300.511(a) and (c). Specifically, in its December 24, 2005 Progress Report, the State reported that 21 of the 57 hearing files closed from July 1, 2004 to June 30, 2005 had decisions within 45 days; the State acknowledged that, for hearings with decisions beyond 45 days, it does not have documentation of specific extensions of the decision timeline at the request of a party.

In Table B of the SPP, OSEP required North Carolina to provide a final progress report by April 14, 2006 and to demonstrate compliance with these requirements by June 30, 2006. On June 22, 2006, the State provided updated data which showed that there were 54 hearing petitions filed from July 1, 2005 through June 12, 2006. Of those cases, 44 had been closed, 12 cases were open beyond 45 days, and in 5 of those open cases, there was a specific extension of the timeline at the request of a party. Those data also showed that of the ten cases still open as of June 12, 2006, the 45-day timeline had not run in 5 cases, and 3 cases had compliant extensions of the timeline. Of the two remaining cases open beyond the 45-day timeline, one case had no documented extension, and one case was remanded from Federal court, but the court had not yet forwarded the records.

OSEP has determined that the more recent data show that North Carolina has demonstrated some improvement in this area in the past several months. North Carolina is responsible for ensuring that due process hearing decisions are issued within applicable timelines, as required by 20 U.S.C. 1415(f)(1)(B)(ii) and 34 CFR §300.511(a) and (c), to the extent not inconsistent with the Individuals with Disabilities Education Improvement Act of 2004.<sup>1</sup> Under Part B, the decision in a due process hearing must be reached within the 45-day timeline, unless the hearing officer grants a specific extension of the timeline at the request of either party. To ensure correction of

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<sup>1</sup> Under the Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446 (IDEA 2004), the 45-day timeline for completion of due process hearing decisions continues to apply, unless the hearing officer extends the timeline for a specific period of time at the request of either party. IDEA 2004 changes the point at which the 45-day timeline commences based on requirements governing the resolution process.

this noncompliance, North Carolina must provide updated data for the period July 1, 2005 through June 30, 2006 under Indicator 17 in the FFY 2005 APR, due February 1, 2007, identifying the precise number of due process hearings that were fully adjudicated, and of those, the number in which a decision was issued within the 45-day timeline, and the number in which a decision was issued within a specific extension of the timeline at the request of a party. In light of the previously-identified noncompliance in this area, in addition to the data for the FFY 2005 APR reporting period, the State also must provide, with the FFY 2005 APR, updated data for the period of July 1, 2006- December 31, 2006. Data for this time period must identify the number of due process hearings that were fully adjudicated, and, of those, the number in which a decision was issued within the 45-day timeline, and the number in which a decision was issued within a specific extension of the timeline at the request of a party. Failure to provide data demonstrating compliance for the applicable reporting periods with the FFY 2005 APR may impact the Department's determination of your State's status under section 616(d) of the IDEA.

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.

Section 611(e)(1)(C) of the IDEA provides that "prior 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.

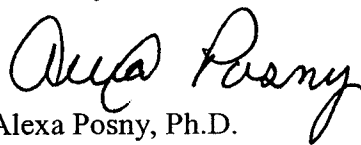
Under section 608(a) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations (20 U.S.C. 1407(a)(2)). A State may use the 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 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,



Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

Enclosure C

cc: Mary N. Watson  
State Director