



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

Honorable Terry Bergeson  
Superintendent of Public Instruction  
Washington Department of Public Instruction  
P.O. Box 47200  
Olympia, Washington 98504-7200

JUL - 3 2006

Dear Superintendent Bergeson:

This is to inform you that we have conditionally approved Washington'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 Washington's final progress report that Washington submitted to OSEP on March 20, 2006 as amended on May 5, 2006 and May 15, 2006 and the State's grant application submitted by the Washington Department of Public Instruction to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 28, 2006 and amended on June 26, 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's February 28, 2005 letter responding to Washington's Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) and OSEP's September 29, 2005 letter responding to Washington's FFY 2003 APR under Part B required Washington to submit a final report demonstrating full compliance with the following requirements of Part B no later than March 30, 2006:

(1) that students with disabilities are invited to individualized education program (IEP) meetings when the purpose of the meeting is the consideration of transition services, and that representatives of other agencies that are likely to be responsible for providing, or paying for, transition services are routinely invited to IEP meetings (34 CFR §300.344(b)); (2) children in need of specially-designed instruction for behavior disorders receive required services despite personnel shortages, and whether children in need of psychological counseling services are receiving those services in accordance with their individualized education programs (IEPs), at no cost to the parents (34 CFR §300.300(a)(3)); and (3) decisions in due process hearings are issued no later than 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension of time, at the request of either party (34 CFR §300.511 (a) and (c)). OSEP first identified noncompliance with these requirements in its December 22, 1999 Monitoring Report to Washington. Washington submitted its Final Progress Report on March 20, 2006, with amendments on May 5, 2006 and May 15, 2006.

With regard to participants at IEP meetings where a student's need for transition services is being considered, as required by 34 CFR §300.344(b)(1), the State reported in the State Performance Plan dated December 1, 2005 that of 236 student files reviewed, 209 files, or 88.6%, indicated that students were invited to the IEP meeting that included the consideration of transition services. In its March 20, 2006 Progress Report, the State reported that it had reviewed 1,239 files during the 2004-2005 monitoring cycle. Of those files, 475 involved transition of students age 14 and above. Monitoring results documented that 408 of those files (86%) contained evidence that the student was invited to and participated in the transition IEP meeting. Washington must include data in the FFY 2005 APR, due February 1, 2007, under Indicator 15 that demonstrate correction of noncompliance with this requirement within one year of its identification.

Regarding ensuring that representatives of other agencies responsible for providing or paying for transition services were invited to IEP meetings, as required by 34 CFR §300.344(b)(3), in its March 20, 2006 Progress Report, Washington reported that of the 3,818 IEPs included in the post-school outcome study, 2,128, or 73% indicated that an adult agency participated in the IEP meeting where transition services were being discussed. In light of changes made to the IDEA by the Individuals with Disabilities Education Improvement Act of 2004, no further action is required with respect to this requirement.

Regarding the provision of specially designed instruction for children with behavioral disorders, in the March 20, 2006 Progress Report, Washington reported that during the 2002-2003 school year, 1,483 special education student files were reviewed. Of these files, 485 had evaluations which recommended specially designed instruction in the area of behavior. Monitoring results documented that 393 of these students (81%) had behavior instruction identified on the IEP. During the 2003-2004 school year, 1,239 student files were reviewed. Of these, 411 contained evaluations which recommended specially designed instruction for behavior. Monitoring results showed that a total of 336 of these students (82%) had behavior instruction identified on the IEP. During the 2004-05 school year, 1,024 student files were reviewed. Of the 328 files that contained evaluations recommending specially designed instruction for behavior, 284 students (87%) had behavior instruction identified on the IEP. These files demonstrate progress toward compliance in this area. Washington must continue to report in the FFY 2005 APR, due February 1, 2007, under Indicator 15 on how it ensures correction of identified noncompliance in this area within one year of its identification.

Regarding psychological counseling services, in its Final Progress Report, the State provided data showing a 63% compliance rate in this area. However, Washington submitted additional data on May 15, 2006 demonstrating that psychological counseling services were provided in 88.6% of the files (31 of 35) where a recommendation was made that a child receives such services. The improvement was the result of factors such as including in the data count children receiving psychological counseling services from private sources at public expense, children receiving such services on an as-needed basis, and children receiving group counseling services. The State confirmed that it has required corrective action for the remaining four files, and that the time for correction will expire in August. Washington has indicated that if the noncompliance identified during monitoring is not corrected by that time, Washington will withhold funds until all student-specific noncompliance is corrected. Washington must provide updated data in the APR, due February 1, 2007, under Indicator 15, that demonstrate correction of identified noncompliance with this requirement within one year of its identification.

Under Part B, a final decision in a due process hearing must be reached within the 45-day timeline, unless the hearing officer extends this timeline for a specific period of time at the request of either party. See 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> In the cover letter of Washington's March 20, 2006 final progress report, the State indicated that it had over 150 due process hearings requested during the 2004-2005 school year, and that the current compliance rate for meeting timelines for due process hearings, is 98%. OSEP requested follow-up data to confirm that the State was in compliance with this requirement. On May 5, 2006, Washington submitted data to OSEP demonstrating that from July 1, 2006 to April 30, 2006, there were 8 due process hearing decisions, 6 were issued within the 45-day timeline, and 2 were issued within allowable extensions. These data demonstrate that Washington is in compliance with applicable due process hearing timelines. OSEP looks forward to reviewing data in the FFY 2005 APR, due February 1, 2007, that demonstrate continuing compliance with this requirement.

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

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<sup>1</sup> Under the Individuals with Disabilities Education Improvement Act Amendments 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. New requirements in IDEA 2004 governing the resolution process affect when the 45-day timeline governing completion of due process hearing decisions commences.

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 "[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.

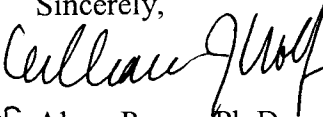
The enclosed grant award for FFY 2006 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related 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 positive efforts are made to employ and advance employment of qualified individuals with disabilities.

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

Sincerely,



*for* Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

Enclosure C

cc: Dr. Douglas Gill