September 17, 2004

Honorable Clifford Janey
Superintendent
District of Columbia Public Schools
825 North Capitol Street NE, 9th Floor
Washington, DC 20002

Dear Dr. Janey:

This is to inform you that we have conditionally approved the District of Columbia's Eligibility Document Submission for Federal Fiscal Year (FFY) 2004 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by the District of Columbia Public Schools (DCPS) to the U.S. Department of Education, Office of Special Education Programs (OSEP):

1. The Part B Eligibility Document Submission for FFY 2004 including the Eligibility Documents submitted June 21, 2001, subsequent revisions to those Eligibility Documents submitted on May 24, 2002 and June 28, 2002; and the Submission Statement submitted on April 9, 2004.

2. The August 17, 2004 letter from DCPS to OSEP, in which DCPS assures that as soon as possible, but no later than July 1, 2005, DCPS will complete the required changes to Chapter 30 of the District of Columbia Municipal Code set forth in the July 13, 2004 letter from Stephanie Smith Lee to Dr. Robert Rice, including: 34 CFR §§300.7(b)(1) and 300.122(a)(3).

   In the August 17, 2004 letter, DCPS also assures that it will take steps to ensure that, throughout the period of this grant award, all public agencies in the District that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. DCPS further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agencies' provision of special education and related services that OSEP requires as a result of its review of DCPS's eligibility documents.

Please note that as part of your Eligibility Document Submission for FFY 2004, DCPS 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 District, after OSEP approval, to information that is a part of DCPS's

eligibility documentation, must meet the public participation requirements of the IDEA and must be approved by OSEP before implementation.

The District's FFY 2004 IDEA Part B grant awards are being released subject to FFY 2004 Special Conditions, as set forth in Enclosure C, that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP has determined that the District has failed to meet the Special Conditions imposed as part of DCPS' FFY 2003 grant award, including the requirement to report publicly on the participation and performance of children with disabilities, including children with disabilities attending charter schools, in District-wide alternate and regular assessments, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139.

OSEP has determined that DCPS continues to be out of compliance in the four areas where special conditions were imposed as part of DCPS' FFY 2003 grant award. The areas are as follows:

(1) (a) Timely Initial Evaluations and Placements

At the end of the final reporting period for FFY 2003, DCPS identified 262 students as overdue for initial evaluation and placement with an average number of overdue days of 25. This represents an increase of 120 from the number of initial evaluations and placements that had not been completed in a timely manner at the end of the final reporting period for FFY 2002. DCPS noted in its FFY 2003 progress reports, the continuing increased numbers of children initially referred for determinations of eligibility for special education services and placement. For example, from February through May 2003, the number of initial referrals undertaken was reported by the Special Education Tracking System (SETS) to be 1,039 compared to 941 from the corresponding period in 2002, a 10.4% increase. DCPS has taken steps to increase its ability to evaluate students during the summer, including using additional summer teams of evaluators. However, these strategies met with limited success and DCPS is reevaluating its strategies. DCPS must ensure that an initial evaluation is completed for all children with disabilities, and an appropriate placement made, within the maximum number of days established by DCPS's policy (currently, 120 calendar days).

(b) Timely Reevaluations

At the end of the final reporting period for FFY 2003, DCPS identified 573 students as overdue for reevaluation with an average number of overdue days of 25. This represents a small increase of 38 from the number of reevaluations that had not been completed in a timely manner at the end of the final reporting period for FFY 2002. During the final reporting period for FFY 2003, DCPS reported that agency-wide concerted efforts were undertaken to clear a large assessment backlog, which, as of January 2004, was noted to be nearly 9,000 assessments of all types. As of the end of the final reporting period for FFY 2003, DCPS had completed and/or otherwise cleared more than 6,500 of these assessments from the backlog with the ultimate goal to eliminate this backlog by September 2004. In addition, the data provided includes triennial reevaluations and requested or ordered "out of

cycle" reevaluations. DCPS and its consultants are working to provide accurate disaggregated information. DCPS must ensure that all reevaluations are conducted in a timely manner.

(2) Timely Implementation of Hearing Officer Determinations

At the end of the final reporting period for FFY 2003, DCPS identified 1,486 hearing decisions that had not been implemented within the timeframe prescribed by the hearing officer or within the timeframe established by DCPS. This represents an increase of 300 from the number of hearing officer decisions that had not been implemented in a timely manner at the end of the final reporting period for FFY 2002. DCPS reported that many of the barriers impacting compliance with hearing officer determinations (HODs) remain to varying extents. Most notably, DCPS' effort to comply with the provisions of the Blackman-Jones consent decree calling for the closure of older-overdue cases had a huge impact on HOD compliance. HOD case dispositions for FY 2003 increased by 106.7% from the numbers reported for FY 2002 (3,135 HOD dispositions in FY 2003 versus 1,517 HOD dispositions in FY 2002). In March 2004, six additional compliance specialists were added to the staff in OSE's Office of Mediation and Compliance.

DCPS has been working with OSEP to identify methods for reporting accurately the information OSEP requires. In an April 4, 2004 letter from Dr. Raymond Bryant to Ms. Stephanie Smith Lee, DCPS reported on procedures it has established to set reasonable timelines for those decisions that do not have a hearing officer established timeframe for implementation. In addition to developing the timelines for implementation of decisions that do not have a hearing officer prescribed timeframe for implementation, DCPS described in the April 4, 2004 letter the internal mechanisms it has established to assist in bringing cases with no hearing officer established timelines to closure. DCPS is working with its data consultants to disaggregate and report separately the number of hearing officer determinations, which do not include a timeframe for implementation prescribed by the hearing officer, that are not implemented within the time-frame set by DCPS. DCPS must ensure that all due process hearing determinations are implemented within the time-frame required by the hearing officer, or if there is no time-frame prescribed by the hearing officer, within a reasonable timeframe set by DCPS.

(3) Placement of Children with Disabilities in the Least Restrictive Environment

During its March 26, 2001 compliance monitoring review of DCPS, OSEP collected data to determine whether DCPS was ensuring that all children with disabilities were placed in the least restrictive environment. OSEP determined that children with disabilities are removed from the regular educational environment for reasons other than that the nature or severity of the disability, even with the use of supplementary aids and services, is such that education in regular classes cannot be achieved satisfactorily. DCPS has conducted city-wide training on strategies and interventions to maintain students in the least restrictive environment. DCPS provided a list of new or expanded inclusive programs and newly created preschool programs

for students with disabilities and has developed a comprehensive list of special education programs in each school. In the first quarterly report for FFY 2003, DCPS reported that it was implementing a Continuous Improvement Monitoring Process (CIMP) for special education in the District of Columbia. On April 23, 2004, DCPS submitted a supplement to its third quarterly report regarding its progress in monitoring to ensure compliance with least restrictive environment (LRE) requirements and attached its SEA Monitoring Manual. The Monitoring Office has established monitoring cycles for all LEAs in DC and begun monitoring. While DCPS provided some data relative to LRE from record reviews conducted in seven high schools, it was unable to provide any interview data or any monitoring reports or corrective action plans issued as a result of its first monitoring cycle. DCPS must continue to monitor to ensure that all children with disabilities are placed in the least restrictive environment appropriate to their individual needs.

(4) Alternate Assessments

The Biennial Performance Report for Part B of the IDEA for grant years 1999-2000 and 2000-2001 was due on May 31, 2002 and submitted on June 7, 2002. Among other information, the Biennial Performance Report required that States submit information regarding children with disabilities' participation in and performance on Statewide assessments. 34 CFR §300.138 requires that children with disabilities participate in general State and district-wide assessment programs with appropriate accommodations and modifications in administration, if necessary. In addition, States are required to develop alternate assessments for those children with disabilities who cannot participate in State and district-wide assessment programs, even with appropriate accommodations and modifications in administration. States also must report on the progress of children with disabilities in the State toward meeting the established performance goals and indicators for children with disabilities on assessment, dropout rates and graduation rates, at a minimum (34 CFR §300.137).

The requirements that States establish performance goals and indicators on performance of children with disabilities on assessments, drop-out rates and graduation rates and report publicly and to the Secretary annually on the progress of the State and of children with disabilities within the State toward meeting those goals, ensure that children with disabilities participate in State and district-wide assessment systems; that States develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the same requirements regarding alternate assessments have been in effect since July 1, 2000. The information reported to the Department in the District's Biennial Performance Report for the 2000-2001 school year demonstrated that the District was not

conducting an alternate assessment for all children with disabilities who could not participate in the District-wide assessment and was not reporting publicly and to the Secretary on the participation and performance of children with disabilities in alternate assessments in the same frequency and detail as for nondisabled children, as required by Part B.

DCPS administered alternate assessments to all children with disabilities who could not participate in the District-wide assessment program in the spring of 2003. Participation and performance data for children with disabilities on the 2002 pilot alternate assessment was reported to the Secretary as part of DCPS's fourth-quarter Special Conditions report on June 13, 2003. DCPS received the results of the 2003 alternate assessment on September 3, 2003 and has reported the results of the regular District-wide assessment to the public via the DCPS website. However, DCPS has not reported publicly and to the Secretary on the participation and performance in regular assessments of children with disabilities attending charter schools established as public schools within DCPS or charter schools established as LEAs. In addition, DCPS has not yet reported to either the public or the Secretary on the participation and performance of children with disabilities, attending DCPS schools, including charter schools that are public schools of DCPS, and charter schools that are LEAs, in the alternate assessment.

The District's failure to complete all FFY 2003 Special Conditions, including the failure to report publicly on the participation and performance of children with disabilities in regular and alternate assessments has resulted in the Department imposing the FFY 2004 Special Conditions contained in Enclosure C of this letter. The reasons for doing so and the specific conditions are detailed in the enclosure. The District must administer these grant awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by the District of these grant awards constitutes an agreement by the District to comply with these Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2004 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 2004-2005 and are available for obligation by States from July 1, 2004 through September 30, 2006.

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 2004. Of the $10,068,106,452 appropriated for Section 611 in FFY 2004, $4,655,106,452 is available for awards on July 1, 2004, and $5,413,000,000 will be available on October 1, 2004.

The funding formula for the Section 611 program is the same as was implemented for FFY 2000. Subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children

with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.

Enclosure A provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure A shows funding levels for distribution of Section 611 funds.

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

These awards are based on submission of a complete eligibility document package, a signed assurance statement regarding resolution of issues identified in OSEP's review of that eligibility document package, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete eligibility document package and assurances must be made available for public inspection.

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." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

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

Sincerely,

/s/Patricia J. Guard for

Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosures

cc: Dr. Raymond Bryant