

September 25, 2002

Honorable Theodore S. Sergi
Commissioner of Education
Connecticut State Board of Education
P.O. Box 2219
Hartford, Connecticut 06145

Dear Commissioner Sergi:

This letter is to inform you that we have conditionally approved Connecticut's Eligibility Document submission for Federal Fiscal Year (FFY) 2002 under Part B of the Individuals with Disabilities Education Act (IDEA) with the two specific special conditions described further in this letter and in Enclosure C. The effective date of these Part B grants is July 3, 2002, the date we received Connecticut's letter of assurance that was specifically requested by our Office of Special Education Programs (OSEP) on June 26, 2002.

Connecticut's FFY 2002 IDEA Part B grant award is being released subject to FFY 2002 Special Conditions as set forth in Enclosure C that are being imposed pursuant to the Department's authority in 34 C.F.R. §80.12. There are two separate sets of special conditions. Acceptance by Connecticut of the Part B grant award constitutes acceptance of the Special Conditions.

The first set of special conditions relates to Connecticut's requirement that an issue cannot be raised at a due process hearing unless it was first raised at an individualized education program (IEP) meeting (referred to in Connecticut as a planning and placement team (PPT) meeting). As discussed below and in Enclosure C, the Department finds this requirement inconsistent with the requirements of Part B, because it delays access to a due process hearing in violation of the Federal IDEA statute.

We have carefully reviewed your August 2, 2002 letter and the arguments it makes that the Connecticut requirement is consistent with Part B. We are sympathetic to the purpose of the Connecticut Assembly in adopting this provision to encourage the early resolution of disputes. In the past, the Department has approved alternative dispute resolution mechanisms proposed by States that are not inconsistent with the IDEA. For example, Connecticut proposed an advisory opinion process under which a parent or school district may request a non-binding opinion of a hearing officer regarding their potential claims. We approved this process. However, the approach Connecticut has taken in requiring that the PPT process be used as a mandatory dispute resolution mechanism is inconsistent with the alternative dispute resolution mechanisms adopted by Congress in the 1997 amendments to the IDEA, is contrary to the language of the IDEA statute on the right to a due process hearing, and is inconsistent with Congressional intent on the purpose of an IEP meeting.

In 1997, Congress enacted provisions to encourage the informal and early resolution of disputes under the IDEA. First, Congress required parents, at the time they filed a request for a due

process hearing, to provide notice of the issues that would be raised and the proposed resolution of those issues. 20 U.S.C. §1415(b)(7). Failure to provide this notice would result in a reduction in attorneys' fees for the parents' lawyer, but not the denial or delay of a due process hearing. Second, Congress required States to make available mediation after the filing of a due process complaint. Mediation is voluntary on the part of the parties; and, more importantly, cannot be used to deny or delay the due process hearing. 20 U.S.C. §1415 (e)(2). Connecticut's PPT limitation is akin to a mandatory mediation meeting prohibited by 20 U.S.C. §1415(e)(2) as it requires parties to participate in an additional mandatory process before proceeding with the due process hearing. It also has the effect of delaying a due process hearing if the parent fails to raise all issues in an initial PPT meeting. The Second Circuit, in a case involving a State statute that allowed the Commissioner of Education to review school district decisions, found the State statute inconsistent with the IDEA when used by the Commissioner to review a due process hearing decision that had not been appealed by the parties. Specifically, the Second Circuit said that State procedures, which were not designed to increase the protections available to parents and that "add additional steps not contemplated in the scheme of the [IDEA] are not enforceable." Antkowiak by Antkowiak v. Ambach, 838 F.2d 635,641 (1988), cert.denied, 448 U.S. 850 (1988).

The Second Circuit decision is particularly compelling given the overall scheme of the IDEA. The statute requires that parents shall receive a due process hearing whenever they file a complaint regarding any matter relating to the identification, evaluation, or educational placement of a child with disabilities or the provision of a free appropriate public education to the child. 20 U.S.C. §§1415(b)(6) and (f)(1). The mediation procedures described above were carefully crafted to encourage informal dispute resolution without delaying this right to a due process hearing. We view any State requirements that serve to delay the due process hearing as inconsistent with the IDEA and contrary to the holding in the Antkowiak case.

An additional concern is the substantial likelihood that Connecticut's PPT limitation will have the unintended consequence of creating an adversarial relationship between parents and school districts at the IEP/PPT meeting. IEP meetings are intended to be collaborative, so that parents and school officials can jointly work out the right educational services for the child. The Connecticut PPT limitation would encourage parents to consult and involve attorneys earlier in the process to ensure that all issues are raised at the PPT meeting, a result that is clearly discouraged by the IDEA, particularly the provisions Congress added in 1997 prohibiting attorneys' fees from being awarded for attending IEP meetings. *See*, 20 U.S.C. §1415(i)(3)(D)(ii). As indicated in the House and Senate committee reports, the purpose of that prohibition was "that the IEP process should be devoted to determining the needs of the child and planning for the child's education with parents and school personnel." H. Rep. No. 105-95 at 105; S. Rep. No. 105-17 at 25-6. Adding an alternative dispute resolution function to the IEP meeting can be expected to undermine this process and is inconsistent with Congressional intent.

We recognize that the PPT requirement was adopted in good faith and we have no interest in penalizing the State unnecessarily. We are prepared to work with you in meeting the Special Conditions in Enclosure C, which require a good faith effort to revise the current requirement to make it consistent with the IDEA, and to comply with the IDEA during the grant period. For example, it may be possible to interpret the implementing Connecticut regulations (which

provide discretion to hearing officers on whether to reject a hearing request based on a failure to meet the PPT requirement) in a manner that would be consistent with the requirement of the IDEA. I have asked my staff to make themselves available to you in this process.

The second set of special conditions relate to the information submitted in Connecticut's Biennial Performance Report for grant years 1999-2000 and 2000-2001. This information demonstrates that Connecticut is not reporting publicly on the performance of children with disabilities on alternate assessments in the same frequency and detail as for nondisabled children as required at 20 U.S.C. §§1412(a)(16)-(17) and 34 C.F.R. §§300.137-300.139. 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. The requirements regarding the participation of children with disabilities in, and reporting on their participation and performance in alternate assessments have been in effect since July 1, 2000.

The requirements that States report publicly on the participation and performance of children with disabilities in State and district-wide assessments, including alternate 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) and 34 C.F.R. §§300.137-300.139. We appreciate your statement in your August 2 letter that Connecticut is working on its Biennial Performance Report issues. As indicated in the enclosure, we will remove this special condition as soon as Connecticut shows that it has corrected this problem.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2002 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 2002-2003 and are generally available for obligation by States from July 1, 2002 through September 30, 2004.

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 2002. Of the \$7,528,533,000 appropriated for all States under Section 611 in FFY 2002, \$2,456,533,000 is available for awards on July 1, 2002, and \$5,072,000,000 will be available on October 1, 2002.

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.

Connecticut's Part B grants are based on Connecticut's submission of the following documents:

1. The Part B Eligibility Document Submission for FFY 2002 including the Eligibility Documents submitted in 2000, 2001, and subsequent revisions to those Eligibility Documents including the submission of May 20, 2002 and the Submission Statement submitted on May 20, 2002; and
2. Assurances contained in your July 3, 2002 letter to OSEP that (A) Connecticut will complete all of the changes to its statutes, regulations, and policies and procedures to resolve the issues pending under 34 C.F.R. §§300.505(a)(1)(ii) (regarding parent consent for the initial provision of special education and related services) and 300.139(a)(2)(i); and (ii) (regarding reporting to the general public on statewide assessments); (B) Connecticut will take steps to ensure that, throughout the period of this grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B of the IDEA and its implementing regulations; and (C) Connecticut will provide OSEP with a copy of a memorandum notifying all public agencies of the changes required by OSEP that affect public agencies' provision of special education and related services.

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

Sincerely,

Robert H. Pasternack, Ph.D.

Enclosures

cc: (w/enc.)

George A. Coleman, Assoc. Cmsr., Division of Educational Programs and Services - CSDE

George P. Dowaliby, Chief, Bureau of Special Education & Pupil Services - CSDE

Mark A. Stapleton, Chief, Office of Legal & Govtl. Affairs - CSDE

Stephanie S. Lee, Director, USDOE-OSEP