

July 1, 2002

Honorable Michael J. Davis
Superintendent of Public Instruction
New Mexico Department of Education
Education Building
300 Don Gasper
Santa Fe, NM 87501-2786

Dear Superintendent Davis:

This is to inform you that we have conditionally approved New Mexico's Eligibility Document Submission for Federal Fiscal Year (FFY) 2002 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 New Mexico to the Office of Special Education Programs:

1. The Part B Eligibility Document Submission for FFY 2002 including the Eligibility Documents submitted May 26, 2000, subsequent revisions to those Eligibility Documents and the Submission Statement submitted June 12, 2002; and
2. The June 27, 2002 letter from New Mexico to OSEP, in which New Mexico assures that as soon as possible, but no later than July 1, 2003, New Mexico will complete all of the changes set forth in the June 26, 2002 issues chart including: 34 CFR §§300.123;, 300.124; 300.505(a)(1); 300.524(a); 300.137(b), and (c), and (d); 300.138; 300.142(a)(3), (b)(2), (e), (f), (g), and (h); 300.144; and 300.147.
3. In the June 27, 2002 letter, New Mexico also assures that it 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. New Mexico 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 the State's eligibility documents.

Please note that as part of your Eligibility Document Submission for FFY 2002, 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 information that is a part of a State's

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

The New Mexico 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 CFR §80.12. Specifically, OSEP determined that New Mexico is not reporting publicly, and to the Secretary, on the performance of children with disabilities on alternate assessments as required at 20 U.S.C. 1412(a)(17); 34 CFR §300.139.

The Biennial Performance Report for Part B of the IDEA for grant years 1999-2000 and 2000-2001 was due on May 31, 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 every two years 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; 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 New Mexico's Biennial Performance Report for the 2000-2001 school year demonstrates that New Mexico is not reporting publicly, and to the Secretary, on the performance of children with disabilities on alternate assessments as required by Part B.

Your State's failure to report on the performance of children with disabilities on alternate assessments in the same frequency and detail as for nondisabled children has resulted in the Department imposing the FFY 2002 Special Conditions contained in Enclosure C of this letter. The reasons for doing so and the specific conditions are detailed in the enclosure.

New Mexico must administer these 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 New Mexico of these grant awards constitutes an agreement by the State to comply with these Special Conditions.

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 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 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.

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.

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

Sincerely,

Stephanie S. Lee
Director
Office of Special Education Programs

Enclosures

cc: Sam C. Howarth