

September 30, 2003

Honorable Paul L. Vance
Superintendent
District of Columbia Public Schools
825 North Capitol Street NE, 9th Floor
Washington, DC 20002

Dear Superintendent Vance:

This is to inform you that we have conditionally approved the District of Columbia's Eligibility Document Submission for Federal Fiscal Year (FFY) 2003 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 2003 including the Eligibility Documents submitted June 21, 2001, and subsequent revisions to those Eligibility Documents submitted on May 24, 2002 and June 28, 2002; and the Submission Statement submitted on May 13, 2003.
2. The June 24, 2003 letter from DCPS to OSEP, in which DCPS assures that as soon as possible, but no later than July 1, 2004, DCPS will complete all of the required changes to Chapter 30 of the District of Columbia Municipal Code set forth in the May 17, 2003 letter from Stephanie Lee to Dr. Paul L. Vance, including: 34 CFR §300.345(b)(2)-(3); and 34 CFR §300.534(b). In addition DCPS will resolve inconsistencies between Chapter 30, §3010.5 and §3010.6 and 34 CFR §300.342(c)(1)-(2). DCPS will also complete the change required in the email correspondence from Dr. Deborah Morrow to Dr. Ray Bryant and Ms. Anne Gay to Chapter 30, §3001.1, "Developmental Delay," in accordance with 34 CFR §300.7(b)(1).

In the June 24, 2003 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 2003, 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 2003 IDEA Part B grant awards are being released subject to FFY 2003 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 not met all of the Special Conditions imposed as part of DCPS' FFY 2002 grant award, including the requirement to report publicly on the participation and performance of children with disabilities in District-wide alternate assessments as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139.

DCPS has met the special conditions in one of the five areas of noncompliance identified in the FFY 2002 Special Conditions attached to DCPS' July 25, 2002 grant award letter. DCPS has submitted information that demonstrates that it is implementing surrogate parent procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the District. Procedures are in place and training has been provided on the identification of children with disabilities who require surrogate parents. The majority of students requiring a surrogate parent are Wards of the District of Columbia. Many of these students reside in foster placements in Prince George's County. DCPS and Prince George's County have developed a data-sharing agreement so that these students can be identified and DCPS can ensure that if a surrogate parent is needed, one is appointed. DCPS is currently implementing procedures to determine whether children with disabilities who are Wards of the District of Columbia in other jurisdictions require the appointment of surrogate parents.

OSEP has also determined that, by the end of the 2002 grant award year, while DCPS made some progress in achieving compliance in the remaining four areas of noncompliance, the progress was insufficient to permit a finding of compliance with Part B. The areas in which progress has been made and the remaining areas to be addressed, are as follows:

(1) (a) Timely Initial Evaluations and Placements

DCPS has made significant and steady progress in reducing the backlog of untimely initial evaluations and placements which numbered 2,331 at the beginning of the Compliance Agreement in 1998 and 204 at the end of the final reporting cycle under the FFY 2001 Special Conditions. Taking into account an average of 235 referrals per month, DCPS, at the end of the final reporting period for FFY 2002, identified 157 students as overdue for initial evaluation and placement. Full implementation of the Special Education Tracking System (SETS) allows specific tracking of all initial referrals to assist in focusing agency efforts. DCPS has established Rapid Response Teams to respond to situations where evaluations are

due and schools do not have the resources to complete them in a timely manner. Effective June 1, 2003, several additional assessment teams are available to work on evaluations and reevaluations after school and on weekends. Three additional assessment teams have been created that will be dedicated solely to preschool evaluations and one more will be added under the Reform Grant that will be a permanent preschool evaluation team. 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

DCPS has also made significant and steady progress in reducing the backlog of untimely reevaluations which numbered 2,529 at the beginning of the Compliance Agreement in 1998 and 757 at the end of the final reporting cycle under the FFY 2001 Special Conditions. At the end of the final reporting period for FFY 2002, DCPS identified 294 students as overdue for reevaluation. The Special Education Tracking System (SETS) is used for tracking reevaluations as well as initial evaluations. As noted above, effective June 1, 2003, several additional assessment teams are available to work on evaluations and reevaluations after school and on weekends. DCPS must ensure that all reevaluations are conducted in a timely manner.

(2) Timely Implementation of Hearing Officer Determinations

At the beginning of the Compliance Agreement in 1998, there were 332 hearing officer determinations that were not implemented within the time-frame prescribed by the hearing officer and 434 at the end of the final reporting cycle under the FFY 2001 Special Conditions. At the end of the final reporting period for FFY 2002, DCPS identified 1,186 hearing decisions that had not been implemented within the time-frame prescribed by the hearing officer. While this represents a substantial increase from the 434 hearing decisions that had not been implemented in a timely manner at the end of the reporting cycle under the FFY 2001 Special Conditions, DCPS's ability to implement hearing officer decisions has been adversely impacted by an increased efficiency in completing hearings and issuing hearing officer decisions. The final two months of the reporting cycle under the FFY 2002 Special Conditions resulted in the issuance of 656 hearing officer decisions requiring implementation coupled with 612 in the immediately-preceding three months. Over twelve hundred hearing officer determinations within a five-month period significantly affected DCPS's ability to implement the determinations in a timely manner. There continues to be a substantial increase in hearing requests; DCPS receives an average of 250 hearing requests per month. There is also a concern regarding the accuracy of the data being submitted that is addressed in the FFY 2003 Special Conditions. 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 time-frame set by DCPS.

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

While DCPS has made progress since completion of the Compliance Agreement in 1998 and during FFY 2001 and 2002 in ensuring that children with disabilities are placed in the least restrictive environment appropriate to their individual needs, DCPS acknowledges that it remains out of compliance with this requirement. DCPS has conducted training for DCPS staff, including regular education personnel, on the types of supplementary aids and services, program modifications, accommodations and supports for school personnel that can be provided in conjunction with regular class placement. In order to increase its capacity to serve children with disabilities along each point of the continuum of alternative placements, DCPS continues to expand available services across the District for the 2003-2004 school year. DCPS reports that it recognizes that it must continue to expand available services throughout the system, enhance those already established, maintain and promote meaningful training and professional development and better coordinate efforts within central administration and on the ground at local schools. DCPS must 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. 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; 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 not yet reported either the results of the regular District-wide assessment or the alternate assessment to the public. DCPS will report alternate assessment participation and performance to the Secretary and to the public when the District-wide assessment information is reported to the public.

The District's failure to complete all FFY 2002 Special Conditions, including the failure to report publicly on the participation and performance of children with disabilities in alternate assessments has resulted in the Department imposing the FFY 2003 Special Conditions contained in Enclosure C of this letter. (The District has informed the Department that it will provide documentation when it has reported publicly on the participation and performance of children with disabilities in alternate assessments.) 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 2003 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 2003-2004 and are available for obligation by States from July 1, 2003 through September 30, 2005.

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 2003. Of the \$8,874,397,536 appropriated for Section 611 in FFY 2003, \$3,202,397,536 is available for awards on July 1, 2003, and \$5,672,000,000 will be available on October 1, 2003.

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

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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.

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