



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

JUL - 6 2004

Honorable Valerie Woodruff
Secretary of Education
Delaware Department of Education
Townsend Building #279
401 Federal Street, Suite 2
Dover, Delaware 19903-1402

Dear Ms. Woodruff:

This is to inform you that we have conditionally approved Delaware's Eligibility Documents 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 Delaware Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP):

1. The Part B Eligibility Documents for FFY 2004 including the Eligibility Documents submitted April 13, 2000, and subsequent revisions to those Eligibility Documents and the Submission Statement submitted April 8, 2004; and
2. The June 28, 2004 letter from Delaware to OSEP, in which Delaware assures that as soon as possible, but no later than July 1, 2005, Delaware will complete the change set forth in the May 12, 2004 issues chart (§300.517(b) Transfer of rights).

In the June 28, 2004 letter, Delaware 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. Delaware further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of changes that impact on their provision of special education and related services that are required by OSEP as a result of its review of the State's Eligibility Documents.

Please note that as part of your Eligibility Documents for FFY 2004, 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 IDEA and must be approved by OSEP before implementation.

The Delaware 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 determined that Delaware is not developing and administering alternate assessments and reporting publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, including alternate assessments, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a)(2). Specifically, Delaware is not reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments.

Your State's failure to develop and administer alternate assessments and report on the participation and performance of children with disabilities in alternate assessments resulted in the Department imposing the FFY 2003 Special Conditions contained in Enclosure C of that letter. Because Delaware did not meet those Special Conditions, and has not yet reported to the Secretary and the public on the participation and performance of children with disabilities in alternate assessments (the State has informed the Department that it will provide documentation by the 2004-05 school year, that it has reported publicly on the participation and performance of children with disabilities in alternate assessments), the Department is imposing Special Conditions on the State's FFY 2004 grant awards under Part B. The reasons for doing so and the specific conditions are detailed in the enclosure. Delaware 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 Delaware of these grant awards constitutes an agreement by the State to comply with the 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 under Section 611 is the same as the formula 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.

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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, a signed assurance statement regarding resolution of issues identified in OSEP's review of the Eligibility Documents, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete Eligibility Document 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,



Stephanie Smith Lee
Director
Office of Special Education Programs

Enclosures

cc: Dr. Martha Brooks