



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

JUL - 5 2005

Honorable Gene Wilhoit
Commissioner of Education
Kentucky Department of Education
Capitol Plaza Tower - 500 Mero Street
Frankfort, KY 40601

Dear Commissioner Wilhoit:

This is to inform you that we have conditionally approved Kentucky's Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2005 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's application submitted by the Kentucky Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 6, 2005 and as amended on June 27, 2005 (Assurances) in which it assures that it will:

1. Operate consistent with all requirements of PL 108-446 and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than July 1, 2006. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

Your State's failure to report to the Secretary and the public on the participation and performance of children with disabilities in alternate assessments in the same detail as the State reported on the assessments of nondisabled children, and to provide an alternate assessment for those children with disabilities who are unable to take the norm referenced test (NRT) resulted in the Department imposing the FFY 2004 Special Conditions contained in Enclosure C of the September 23, 2004 grant award letter. Kentucky is now reporting publicly and to the Secretary on its website on the performance data at the District level on students taking the alternate portfolio, where the reporting would not disclose personally identifiable information regarding students. This determination is based on our review and acceptance of the documents submitted by Kentucky to OSEP on June 27-28, 2005.

Because Kentucky did not completely meet the FFY 2004 Special Conditions, and has not yet developed, administered, and reported on performance and participation on an alternate assessment for those students requiring an alternate assessment format for the NRT administered in grades 3, 6, and 9, the Department is imposing Special Conditions on the State's FFY 2005 grant awards under Part B. The reasons for doing so and the specific conditions are detailed in Enclosure D. Kentucky 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 Kentucky of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Please note that as part of your Eligibility Documents for FFY 2005, 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 policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

Enclosed are grant awards for funds currently available under the Department of Education FFY 2005 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 2005-2006 and are available for obligation by States from July 1, 2005 through September 30, 2007.

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 2005. Of the \$10,589,745,824 appropriated for Section 611 in FFY 2005, \$5,176,745,824 is available for awards on July 1, 2005, and \$5,413,000,000 will be available on October 1, 2005.

Under the Section 611 formula, 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. Section 619 funds are allocated to States subject to certain maximum and minimum funding requirements, based on the amount that each State received from FFY 1997 funds, the general population of children age 3 to 5, and the number of children living in poverty in the age range 3 to 5.

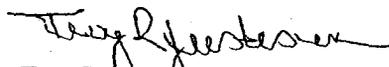
Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611 funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

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

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,



Troy R. Lustedsen
Acting Director
Office of Special Education
Programs

Enclosures

cc: Johnnie Grissom