UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL - 1 2009

Honorable Richard Mills
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, New York 12234

Dear Commissioner Mills:

This is to inform you that we have conditionally approved New York's application for Federal Fiscal Year (FFY) 2009 funds under Part B of the Individuals with Disabilities Education Act (IDEA or Part B). Our conditional approval is based on our review of the application submitted by the New York State Education Department (NYSED) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 8, 2009 and May 22, 2009, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided specific assurances that it will:

1. Operate consistent with Part B 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 and applicable regulations as soon as possible, and not later than June 30, 2010. Section II of the State's application identifies the IDEA requirements 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 and applicable regulations. Within Section II, the State has included for each assurance it cannot meet at this time the date by which it expects to complete necessary changes to any policies and procedures that are not yet in compliance with the requirements of Part B and applicable regulations.

Please note that as part of your application for FFY 2009, your State has made an assurance, in 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the State, after OSEP approval, to information that is a part of a State's application, must meet the public participation requirements in 34 CFR §300.165.

Enclosed are the State's regular grant awards for funds currently available under the Omnibus Appropriations Act, 2009 for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2009-2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

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 2009. Of the $11,505,211,000 appropriated for Section 611 in FFY 2009, $2,912,828,004 is available for awards on July 1, 2009, and $8,592,382,996 will be available on October 1, 2009.

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.[1] We allocated the regular FFY 2009 appropriation for the Preschool Grants program, which represents a reduction of $280 from the appropriation level for FFY 2008, under the formula in Section 619(c)(3). Under this provision, when the amount available for allocations is less than the amount allocated to the States for the preceding fiscal year, each State is first allocated the amount that the State received from FFY 1997 funds. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between FFYs 1997 and 2008, as compared to the total of such increases for all States.[2]

In addition to these regular FFY 2009 Part B funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part B funding. The ARRA IDEA Part B grants are a supplemental appropriation to the regular IDEA Part B appropriation. The first 50 percent of the ARRA IDEA Part B funds were awarded to States on April 1, 2009 and the second 50 percent will be available to States by September 30, 2009. Please note that each State will be required to submit additional information that addresses how the State will meet the accountability and reporting requirements in section 1512 of the ARRA before it will be considered eligible to receive the second 50 percent of the ARRA funds. Together, a State's regular FFY 2009 IDEA funds and a State's ARRA IDEA Part B funds constitute a State's total FFY 2009 Part B allocation. Given the increased IDEA Part B FFY 2009 allocation to each State, States may wish to review carefully the guidance on the ARRA IDEA Part B grant awards, available at http://www.ed.gov/fund/data/award/idea/arra/index.html.

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.

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

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[1] The amount that a State's allocation may increase from one year to the next is capped at the amount the State received in the prior year multiplied by the sum of 1.5 percent and the percentage increase in the total amount appropriated for Part B of IDEA from the prior year. Additionally, the maximum amount that a State may receive in any fiscal year is calculated by multiplying the number of children with disabilities ages 3 through 21 served during the 2004-2005 academic year in that State by 40 percent of the annual per pupil expenditure (APPE), adjusted by the rate of annual change in the sum of 85 percent of the children aged 3 through 21 for whom that State ensures FAPE and 15 percent of the children living in poverty. Because there are multiple caps, in any year the "effective cap" on a State's allocation is the lowest cap for that State.

[2] Since total FFY 2009 appropriations for Section 619 (including both the regular and ARRA appropriations) represent an increase from the appropriations level for FFY 2008, each State received a total FFY 2009 allocation based on the formula in Section 619(c)(2), which bases distributions on the amount that each State received from FFY 1997 funds, the State's relative population of children aged three through five and the State's relative population of children aged three through five who are living in poverty.

Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current." We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the State may not expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under section 608(a)(2) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations. A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its Part B application for this purpose.

The enclosed grant awards for FFY 2009 are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part B.

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

Sincerely,

Patricia J. Guard

Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A
Enclosure B
Enclosure C

cc: State Director of Special Education