



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

JUL - 1 2010

Honorable Kerri L. Briggs
State Superintendent
District of Columbia
Office of the State Superintendent of Education
810 First Street, NE
9th Floor
Washington, D.C. 20002

Dear Superintendent Briggs:

We have conditionally approved the District of Columbia's application for Federal Fiscal Year (FFY) 2010 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 District of Columbia, Office of the State Superintendent of Education (D.C. OSSE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 10, 2010 and June 4, 2010, 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 consistently 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 as soon as possible, and not later than June 30, 2011. Within Section II of its application, 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.

As set forth in Enclosure D, in April 2006, under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department designated the District of Columbia Public Schools (DCPS)¹ a "high-risk" grantee. Special Conditions were placed on all Department grants awarded to DCPS because of problems in DCPS' fiscal and program accountability, management systems, and related areas. The FFY 2006, FFY 2007, FFY 2008, and FFY 2009 IDEA Part B grant awards were released subject to the Department-wide Special Conditions. Because of the problems noted in the Department's correspondence, dated June 15, 2010 (Enclosure D), D.C. OSSE's status as a "high-risk" grantee under 34 CFR §80.12 continues, and therefore, Special Conditions are imposed on all FFY 2010 grants awarded to D.C. OSSE by the Department.

In addition to the Department-wide conditions, the State's FFY 2010 IDEA Part B grant awards are being released subject to FFY 2010 Special Conditions, as set forth in Enclosure E, that are

¹ The District of Columbia Public Education Reform Act of 2007 signed into law by the Mayor on April 23, 2007, transferred authority to the Mayor's Office for the purpose of administering Federal grants, the functions of the State Educational Agency (SEA), the Local Educational Agency (LEA), and the State agencies responsible for Adult Education and Literacy and the IDEA Part C early intervention program. The transfer to D.C. OSSE became effective October 1, 2007.

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being imposed pursuant to the Department's authority in IDEA section 616(g) and 34 CFR §80.12. Specifically, OSEP determined that D.C. OSSE has continued to demonstrate noncompliance with the requirements to ensure: timely initial evaluations and reevaluations (IDEA section 612(a)(7) and 614(a) through (c) and 34 CFR §§300.301(c)(1) and 300.303); timely implementation of due process hearing decisions (IDEA section 615(f) and (i)); identification and timely correction of noncompliance, including noncompliance regarding placement in the least restrictive environment (IDEA section 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)); and that individualized education programs (IEPs) include the required secondary transition content (IDEA section 614(d)(1)(A)(i)(VIII) and 34 CFR §300.320(b)).

Your State's failure to ensure timely initial evaluations and reevaluations, timely implementation of hearing officer determinations, identification and timely correction of noncompliance, including noncompliance regarding placement in the least restrictive environment, and that IEPs of youth aged 16 and above include the required content resulted in the Department imposing the FFY 2009 Special Conditions contained in Enclosure E of the July 1, 2009 grant award letter.² Because D.C. OSSE did not meet those Special Conditions, the Department is imposing Special Conditions on the State's FFY 2010 grant awards under Part B. We have included two additional areas in the FFY 2010 Special Conditions based on D.C. OSSE's failure to: (1) collect and report valid and reliable data for State Performance Plan Indicator 12 (early childhood transition) and Indicator 15 (identification and correction of noncompliance); and (2) demonstrate compliance with the early childhood transition requirements (IDEA section 612(a)(9) and 34 CFR §300.124(b)).

On June 3, 2010, D.C. OSSE was notified that under section 616(d), the Department determined that D.C. OSSE needs intervention in implementing the requirements of Part B of the IDEA for the fourth consecutive year. In accordance with IDEA section 616(e)(2)(B)(i) and 34 CFR §300.604(b), the Department required D.C. OSSE to submit a corrective action plan (CAP) by August 1, 2010 that is reasonably designed to address each of the areas in which the State needs intervention. In addition, pursuant to IDEA section 616(e)(1)(B) and (2)(A), the Department directed D.C. OSSE to use \$500,000 of its FFY 2010 State-level funds under IDEA section 611(e) to address the longstanding noncompliance with the requirements to conduct timely initial evaluations and reevaluations. D.C. OSSE must use \$500,000 of its FFY 2010 State-level funds to carry out initial evaluations and reevaluations for children who have not been provided a timely initial evaluation or reevaluation (i.e., to reduce the backlog of overdue evaluations and reevaluations). The Department authorizes D.C. OSSE to use the otherwise directed funds for other purposes if the State elects to direct local educational agencies (LEAs) that demonstrated noncompliance with the requirements to conduct timely initial evaluations and reevaluations, to

² These areas of noncompliance are included in the Memorandum of Agreement (MOA) entered into on December 7, 2009 between D.C. OSSE and the Department. The Department agreed to modify the FFY 2009 Special Conditions to align with the reporting under the MOA to avoid duplication and reduce the burden of reporting. See <http://www2.ed.gov/fund/data/award/idea/2009partb/memorandumofagreement.doc>

use \$500,000 of their FFY 2010 Part B funds to reduce the backlog of overdue evaluations and reevaluations.³ The requirement that D.C. OSSE submit a CAP and demonstrate that it has used \$500,000 of FFY 2010 State-level funds under IDEA section 611(e), and/or has directed LEAs to use FFY 2010 Part B funds to reduce the backlog is included in these Special Conditions.

On December 7, 2009, the Department and D.C. OSSE entered into a Memorandum of Agreement (MOA) whereby D.C. OSSE agreed to dismiss its request for an administrative hearing to appeal the Department's decision to withhold 20 percent of D.C. OSSE's FFY 2009 State-level funds under IDEA section 611(e) based on the Department's June 1, 2009 determination that D.C. OSSE needed intervention for three consecutive years. D.C. OSSE agreed to take corrective actions under specific timelines and provide regularly scheduled progress reports to OSEP and the Department agreed to release portions of the withheld funds as D.C. OSSE meets the benchmarks established in the MOA. The requirement that D.C. OSSE submit regularly scheduled progress reports under the MOA is included in these Special Conditions.

The reasons for the Special Conditions and the specific conditions are detailed in Enclosure E. The State 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 Columbia of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Please note that as part of your application for FFY 2010, 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 during the FFY 2010 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 grant awards for funds currently available under the Consolidated Appropriations Act, 2010 -- P.L. 111-117 for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are available for obligation by States from July 1, 2010 through September 30, 2012 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 2010. Of the \$11,505,211,000 appropriated for Section 611 in FFY 2010, \$2,912,828,000 is available for awards on July 1, 2010, and \$8,592,383,000 will be available for awards on October 1, 2010.

³ Under Section III of the FFY 2010 Part B application, D.C. OSSE was required to complete an Excel Interactive Spreadsheet that describes how it intends to use its FFY 2010 State-level funds reserved under IDEA section 611(e) for administration and other State-level activities. In completing the Spreadsheet, each State must indicate, for each of the activities listed in IDEA section 611(e)(1) and (2), dollar amounts, if any, of the State's total allocation under section 611(e) for FFY 2010 that will be used for that activity. D.C. OSSE must obtain the prior approval of OSEP if it changes the dollar amounts that will be used for one of the activities listed in the Spreadsheet and that change exceeds 10 percent of the total amount of funds reserved under IDEA section 611(e) for State-level activities. See 34 CFR §80.30(c)(1).

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.⁴ In FFY 2010, the appropriation for the Preschool Grants program is the same as the regular appropriation level for FFY 2009. Section 619(c)(2)(B)(i) provides that, “[n]o State’s allocation shall be less than its allocation under this section for the preceding fiscal year.” Consistent with this provision, each State has been allocated an amount for FFY 2010 that is the same as the State received from the regular FFY 2009 appropriation.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.

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.

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 of FFY 2010 funds are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if

⁴ 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.

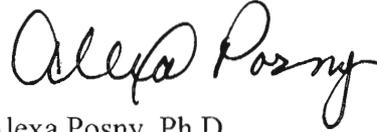
⁵ Pursuant to language contained in the Department of Education Appropriations Act in 2010, the Part B funds awarded to States under the American Recovery and Reinvestment Act of 2009 for FFY 2009 were not considered for purposes of calculating State allocations under Sections 611 and 619 for FFY 2010.

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necessary. These inquiries may be necessary 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,

A handwritten signature in black ink that reads "Alexa Posny". The signature is written in a cursive style with a large, looped initial 'A'.

Alexa Posny, Ph.D.
Acting Director
Office of Special Education Programs

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C
- Enclosure D
- Enclosure E

cc: State Director of Special Education