UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 30 2010

Honorable Virginia M. Barry
Commissioner of Education
New Hampshire Department of Education
101 Pleasant Street
Concord, New Hampshire 03301-3860

Dear Commissioner Barry:

We have conditionally approved New Hampshire'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 New Hampshire Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 13, 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.

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.

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] 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,

[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.

each State has been allocated an amount for FFY 2010 that is the same as the State received from the regular FFY 2009 appropriation.[2]

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.

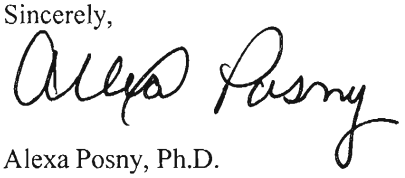
Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) 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 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,



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

Enclosures

Enclosure A
Enclosure B
Enclosure C

cc: State Director of Special Education

[2] 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.