

Honorable John King  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue  
Albany, New York 12234

Dear Commissioner King:

We have approved New York's application for Federal Fiscal Year (FFY) 2013 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our 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 10, 2013, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. In addition, with regard to Assurance 12 relating to the requirements in 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154, the State provided a specific assurance that it will:

1. Operate consistently with IDEA 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 IDEA Part B as soon as possible, and not later than June 30, 2014. Within Section II of its application, the State has included, for assurance 12, 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 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154.

Your State checked no to Assurance 12, because your State does not yet have policies and procedures in place to meet the new requirements related to children with disabilities who are covered by public benefits or insurance (e.g., Medicaid), resulting from the amendments to 34 CFR §300.154(d)(2)(iv) and (v), which the Department published in the Federal Register on February 14, 2013. See 78 Fed. Reg. 10525, 10537-10538. These final regulations became effective on March 18, 2013. OSEP required States to submit their applications for their Part B FFY 2013 grant awards on May 10, 2013. However, 34 CFR §76.704(b) provides that a State plan (in this case, the Part B application) must meet the requirements that were in effect for the program three months before the application due date (in this case, February 10, 2013) and any additional requirements known on that date that are scheduled to become effective by the expected grant award date (for most States, July 1, 2013). Ordinarily, States that check no to any assurance in Section II.A receive a conditional approval, but the new requirements in 34 CFR §300.154, which caused your State to check no to Assurance 12, were not published in the Federal Register as final regulations three months prior to May 10, 2013, the submission due date of your Part B application. Your State has assured that it will operate consistently with all

requirements in 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154 during the period of your FFY 2013 Part B grant award, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2014. Further, your State has checked yes to every other assurance in Section II.A. Therefore, we have fully approved your State's Part B grant application for FFY 2013.

Please note that as part of your application for FFY 2013, your State has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect during the FFY 2013 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 and Further Continuing Appropriations Act, 2013 -- P.L. 113-6 for the IDEA Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are available for obligation by States from July 1, 2013 through September 30, 2015 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 2013. Of the \$10,974,865,803 appropriated for Section 611 in FFY 2013 \$1,691,482,803 is available for awards on July 1, 2013, and \$9,283,383,000 will be available for awards on October 1, 2013. Under the Section 611 formula, in a year in which the amount available for allocations to States decreases from the prior year, but is greater than 1999 level, any amount available for allocations to States above the 1999 level is allocated based on the relative increases in funding that the States received between 1999 and the prior year.

In FFY 2013, the appropriation for the Preschool Grants program is \$353,237,522. Under the Section 619 formula, in a year in which the amount available for allocation to States decreases from the prior year and is less than the amount allocated to the States for FFY 1997, State allocations are based on the amount that each State received under section 619 for FFY 1997, ratably reduced.

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

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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 IDEA 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 IDEA Part B application for this purpose.

The enclosed grant awards of FFY 2013 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 IDEA Part B.

As a reminder, no later than August 31, 2013, all prime recipients of IDEA (Part B or Part C) funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. FFATA guidance is found at <http://www2.ed.gov/policy/gen/leg/recovery/rms-web-conferences.html>. Please contact your State's Fiscal Accountability Facilitator if you have further questions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove". The signature is fluid and cursive, with a large loop at the end.

Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C

cc: State Director of Special Education