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

July 1, 2015

Honorable Terry Holliday
Commissioner of Education
Kentucky Department of Education
Capitol Plaza Tower
500 Mero Street, 1st Floor
Frankfort, Kentucky 40601

Dear Commissioner Holliday:

We have approved Kentucky's application for Federal Fiscal Year (FFY) 2015 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 Kentucky Department of Education (KDE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 13, 2015, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A.

Please note that as part of your application for FFY 2015, your State has provided a certification, pursuant to 34 CFR §76.104, that its application meets the requirements of IDEA Part B and that the State will operate its Part B program in accordance with all of the required assurances and certifications. 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 FFY 2015 grant awards for funds currently available under the Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235, 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, 2015, through September 30, 2017, 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 2015. Of the $11,497,848,000 appropriated for Section 611 in FFY 2015, $2,214,465,000 is available for awards on July 1, 2015, and $9,283,383,000 will be available for awards on October 1, 2015. Under the Section 611 formula, in a year in which the amount available for allocations to States increases from the prior year, 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]

[1] The amount that a State's allocation may increase from one year to the next is capped at the amount the State receive 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

For FFY 2015, the appropriation for the Preschool Grants program is $353,238,000. Under the Section 619 formula in a year in which the amount available for allocations to States remains the same or increases 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, subject to the requirement that no State's allocation shall be less than its section 619 allocation for the preceding fiscal year.

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 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 2015 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.

In Section V of its IDEA Part B application, pursuant to the authority in IDEA section 618(a)(3), the State was required to submit data on the total amount of State financial support made available for special education and related services for children with disabilities in State fiscal year (SFY) 2013 and SFY 2014. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data your State has provided in Section V, OSEP will follow-up with your State.

On April 28, 2015, the Department published final local educational agency (LEA) maintenance of effort (MOE) regulations, which become effective on July 1, 2015. OSEP required States to

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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.

submit their annual Part B State applications for FFY 2015 by May 12, 2015. Under 34 CFR §300.704(b)(1)(ii), 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 date the application is due.

Because the new LEA MOE regulations did not take effect three months before the FFY 2015 Part B applications were due, a State that did not have policies and procedures in place to implement the new LEA MOE regulations was not required to check "no" for assurances 11 and 17 in Section II.A. of the application related to general supervision and expenditure of funds, respectively. However, your State has provided an assurance in its FFY 2015 Part B application that it will operate consistent with the requirements of IDEA and its applicable regulations throughout the period of the grant award. Therefore, your State must make such changes to its existing LEA MOE policies and procedures as are necessary to bring those policies and procedures into compliance with the new LEA MOE regulations as soon as possible, but not later than July 1, 2016. In the annual Part B State application for FFY 2016, your State must check "no" for assurances 11 and 17 in Section II.A. if it will not have policies and procedures in place to implement the new LEA MOE regulations by July 1, 2016.

Please note that effective with this IDEA Part B FFY 2015 grant award, IDEA Part B funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR Part 200 and commonly referred to as the Uniform Guidance. The Uniform Guidance provisions in 2 CFR Part 200 replace provisions previously found in the Education Department General Administrative Regulations or EDGAR in 34 CFR Parts 74 and 80 and prior Office of Management and Budget (OMB) Circulars A-87 and A-133. Under 2 CFR §200.308(e), a State must obtain the prior approval of OSEP, by submitting a revised Section III (the Excel Interactive Spreadsheet), for a transfer of funds among direct cost categories, programs, or activities that exceed 10% of the total amount of funds reserved under IDEA section 611(e) for State-level activities or are expected to exceed 10% of that total, and the Federal share in the grant exceeds the Simplified Acquisition Threshold (currently set at $150,000). This replaces a similar provision previously found in 34 CFR §80.30(c)(1). Please review the Department's technical assistance resources on the Uniform Guidance at http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html.

Section 604 of the IDEA provides that "[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act]." Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, your State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

As a reminder, all prime recipients of IDEA Part B funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. 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,

/s/ Melody Musgrove

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

Enclosures

Enclosure A
Enclosure B
Enclosure C
cc: State Director of Special Education