

July 1, 2016

Honorable MaryEllen Elia  
Commissioner of Education  
New York State Education Department  
89 Washington Avenue  
Albany, New York 12234

Dear Commissioner Elia:

We have approved New York's application for Federal Fiscal Year (FFY) 2016 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B application submitted by the New York State Education Department to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 5, 2016, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A.

In an April 27, 2015 letter to NYSED, OSEP informed NYSED that the State was required to come into full compliance as soon as possible with the IDEA Part B requirements at 20 U.S.C. § 1415(g) and 34 CFR §§ 300.514(b) and 300.515(b) to issue State-level review decisions for appeals of due process complaints within 30 days of receiving a request for review, and to submit data with its FFY 2015 IDEA Part B Application demonstrating progress toward full compliance. NYSED did submit data with its FFY 2015 IDEA Part B Application demonstrating that the State had come into full compliance with the applicable requirements, and was able to provide the assurance for Section II.A.6. The April 27, 2015 letter also required NYSED to provide the Department with quarterly reports covering a total reporting period of one year, from July 1, 2015 to June 30, 2016, to demonstrate continued compliance with these requirements. NYSED provided OSEP with quarterly reports that demonstrated continued compliance with section 615(g) of the IDEA and its implementing regulations (20 U.S.C. § 1415(g) and 34 CFR §§ 514(b) and 515(b)). As a result, OSEP plans to discontinue NYSED's quarterly reporting requirement for the FFY 2016 grant year, after NYSED submits its final report to OSEP, due July 15, 2016, covering data through June 30, 2016, consistent with the requirements set out in the April 27, 2015 letter.

Please note that as part of your application for FFY 2016, 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 2016 grant awards for funds currently available under the Consolidated Appropriations Act, 2016, P.L. 114-113, 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, 2016, through September 30, 2018, 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 2016. Of the \$11,912,848,000 appropriated for Section 611 in FFY 2016, \$2,629,465,000 is available for awards on July 1, 2016, and \$9,283,383,000 will be available for awards on October 1, 2016. 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 relative population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the relative number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.<sup>1</sup>

For FFY 2016, the appropriation for the Preschool Grants program is \$368,238,000. 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, State allocations, subject to certain maximum and minimum funding requirements, are based on the amount that each State received under Section 619 for FFY 1997, the relative population of children aged three through five, and the relative number of children aged three through five living in poverty.

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.”

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<sup>1</sup> 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.

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.

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) 2014 and SFY 2015. 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.

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.

The enclosed grant awards of FFY 2016 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, 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.

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

Sincerely,

/S/

Ruth E. Ryder  
Acting Director  
Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

Enclosure C

cc: State Director of Special Education