



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

JUL - 8 2004

Honorable Thomas Watkins
Superintendent of Public Instruction
Michigan State Department of Education
PO Box 30008
Lansing, Michigan 48909

Dear Superintendent Watkins:

This is to inform you that we have conditionally approved Michigan's Eligibility Documents for Federal Fiscal Year (FFY) 2004 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by the Michigan State Department of Education to the U.S. Department of Education, Office of Special Education Programs (OSEP):

1. The Part B Eligibility Documents for FFY 2004 including the Eligibility Documents submitted April 13, 2000, and subsequent revisions to those Eligibility Documents and the Submission Statement submitted May 9, 2004; and
2. The July 2, 2004 letter from Michigan to OSEP in which Michigan assures that as soon as possible, Michigan will complete all of the changes set forth in the July 1, 2004 issues chart including: 34 CFR §§300.7(c)(1)(i); 300.121(a); 300.534(a)(1); 300.342(b)(1)(ii); and 300.343(a).

In the July 1, 2004 letter, Michigan also assures that, it will take steps to ensure that, throughout the period of this grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. Michigan further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of changes that impact on their provision of special education and related services that are required by OSEP as a result of its review of the State's Eligibility Documents.

Michigan's May 14, 2004 response to OSEP's Verification Visit Letter dated March 16, 2004 included information and data that demonstrate Michigan's compliance with the requirement in 34 CFR §300.661(a) and (b)(1) to ensure that complaints are resolved within 60 days after a complaint is filed, unless an extension of time is permitted due to exceptional circumstances that exist with respect to a particular complaint. OSEP recognizes Michigan's efforts to make the changes necessary to resolve complaints within timelines such as hiring six outside contractors and seven internal compliance investigators, working to develop a new database, and revising and clarifying its policy concerning what constitutes an exceptional circumstance.

However, OSEP remains concerned about Michigan's ability to sustain its progress in meeting requirements under 34 CFR §300.661 because of its longstanding noncompliance in meeting these requirements. (See OSEP's March 16, 2004 verification visit letter.) OSEP will issue shortly a separate letter responding to the FFY 2002 Annual Performance Report (that the State submitted on April 9, 2004) which will require additional reporting in order for the State to demonstrate during the FFY 2004 grant year that it continues to be in compliance with 34 CFR §300.661(a) and (b)(1). Continued resolution of this issue should be viewed as a high priority by the State.

Please note that as part of your Eligibility Documents for FFY 2004, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to information that is a part of a State's eligibility documentation, must meet the public participation requirements of IDEA and must be approved by OSEP before implementation.

The Michigan FFY 2004 IDEA Part B grant awards are being released subject to FFY 2004 Special Conditions, as set forth in Enclosure C, that are being imposed pursuant to the Department's authority in 34 CFR §80.12. Specifically, OSEP determined that Michigan is not reporting on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessment of nondisabled children, as required at 20 U.S.C. 1412(a)(17) and 34 CFR §300.139(a).

Your State's failure to report on the participation and performance of children with disabilities in regular and alternate assessments resulted in the Department imposing the FFY 2003 Special Conditions contained in Enclosure C of the July 7, 2003 grant award letter. On June 2, 2004 Michigan submitted its final progress report, which demonstrates that Michigan is reporting publicly and to the Secretary on the participation and performance of children with disabilities who participate in alternate and regular State and district wide assessments. However, Michigan also reported in the June 2, 2004 submission to OSEP that the State does not report to the public and to the Secretary on the participation and performance of children with disabilities on regular assessments in the same detail as it reports on the regular assessments of non-disabled children. Therefore, the Department is imposing Special Conditions on the State's FFY 2004 grant awards under Part B. The reasons for doing so and the specific conditions are detailed in the enclosure. Michigan must administer these 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 Michigan of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2004 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2004-2005 and are available for obligation by States from July 1, 2004 through September 30, 2006.

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

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the total funds that will be awarded to you for FFY 2004. Of the \$10,068,106,452 appropriated for Section 611 in FFY 2004, \$4,655,106,452 is available for awards on July 1, 2004, and \$5,413,000,000 will be available on October 1, 2004.

The funding formula under Section 611 is the same as the formula implemented for FFY 2000. 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.

Enclosure A provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure A shows funding levels for distribution of Section 611 funds.

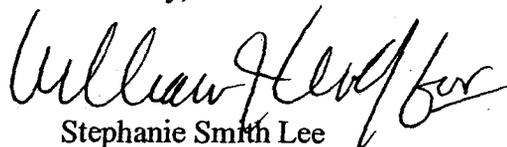
Enclosure B provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure B shows State-by-State funding levels for distribution of Section 619 funds.

These awards are based on submission of a complete Eligibility Document, a signed assurance statement regarding resolution of issues identified in OSEP's review of the Eligibility Documents, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete Eligibility Document and assurances must be made available for public inspection.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

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

Sincerely,



Stephanie Smith Lee

Director

Office of Special Education Programs

Enclosures

cc: Dr. Jacquelyn Thompson