



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Virginia C Beridon
State Director of Special Education
Department of Education
Post Office Box 94064
Baton Rouge, Louisiana 70804-9064

SEP 21 2000

Dear Ms. Beridon:

This is in response to your letter of September 11, 2000, in which you request that the date on your Federal Fiscal Year (FFY) 2000 grant awards under Part B of the Individuals with Disabilities Education Act be revised to be effective July 1, 2000 instead of the current effective date of July 6, 2000. The Office of Special Education Programs (OSEP) established the effective date for Louisiana's Part B grant awards as July 6, 2000 because that was the date on which the Louisiana Department of Education (LDE) submitted the required assurance to demonstrate eligibility for its Part B grants.

Under the Cash Management Improvement Act of 1990, which provides for timely transfer of funds between Federal agencies and States, the Federal government is liable for interest payments to a State that disburses its own funds for Federal program proposes before the date that Federal funds are deposited to the States' bank account for those obligations. OSEP Memo 99-13 (Procedures for States to Follow in order to receive a Grant Award under Part B of the IDEA, for Federal Fiscal Year 2000), describes the Education Department General Administrative Regulations (EDGAR) at §§76.703 -76.704 which establish procedures for the Department and States regarding the obligation of funds (copy available upon request).

As explained in OSEP Memo 00-16, OSEP made grant awards under Part B for FFY 2000 to States that had submitted complete eligibility document packages and had provided an assurance that as soon as possible within the grant year, the State would make all needed changes that OSEP identifies in its review of the State's eligibility documentation. Our records reflect that on June 21, 2000 LDE received a memo from Ruth Ryder, Director of the Monitoring and State Improvement Planning Division informing LDE of the appropriate language for its assurance (see attachment A, letter and fax confirmation). (On the same day, LDE also received a letter describing possible problems with its public participation process (see attachment B, letter and fax confirmation).) In addition, on June 23, 2000, Ms. Ryder and members of her staff conducted three conference calls that included representatives from the majority of the

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

States, including a representative from LDE. During this call, the need for an assurance prior to July 1, 2000 and the impact on the effective date of the grant award was clarified.

As of July 5, 2000, no assurance had been received from LDE. Linda Whitsett, the OSEP State contact for Louisiana, contacted you and you requested that another copy of the assurance letter of June 21, 2000 be faxed. That letter was faxed to you on July 6, 2000. LDE submitted the required assurance, dated July 7, 2000, but received in OSEP by fax on July 6, 2000. Therefore, at that point, LDE had submitted the required documentation to demonstrate eligibility, as of July 6, 2000 and the effective date of its Part B grant awards was July 6, 2000.

Subsequently, we received a call indicating that the July 6, 2000 effective date created problems with your fiscal or accounting system. You verbally requested pre-award costs for the period between July 1, 2000 and July 6, 2000. You were asked to submit your request in writing which you did on September 11, 2000. .

We have determined that it is acceptable to grant your request for pre-award costs because it appears that it will have very limited potential harm to the Federal interest. We are requiring that before spending State funds for any costs incurred between July 1 -and July 6, 2000, LDE will: 1) Exhaust any unspent Federal funds from prior years' grants under Part B that are available , consistent with Part B's funding scheme, to be spent on those costs; or 2) Provide documentation that its procedures do not permit it to use Federal funds from prior years' grants in this manner or that the use of such funds would impose substantial administrative costs on the State.

Please be advised, however, that our decision here is based on this particular situation and the limited potential harm to the Federal interest. In the future we may not be able to accommodate such requests. This letter will serve as notice of modification to the grant award period and should be attached to the grant award document.

If you have questions about this letter or the provisions of the Cash Management Improvement Act, please feel free to contact me or Ruth Ryder of my staff, at (202) 205-5547

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education Programs



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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MEMORANDUM

TO Virginia Beridon
Assistant Superintendent
Louisiana Department of Education

FROM Ruth Ryder
Director, Monitoring and State Improvement
Planning Division, OSEP

DATE June 21, 2000

SUBJECT: Assurance Regarding Eligibility Document

As explained in OSEP Memorandum 00-16, the Office of Special Education Programs (OSEP) will make grant awards, under Part B of the Individuals with Disabilities Education Act (Part B) for Federal Fiscal Year (FFY) 2000, to States that have submitted complete eligibility document packages and have provided an assurance that, as soon as possible within the grant year, but no later than March 2, 2001, the State will make all needed changes that OSEP identifies in its review of the eligibility documentation. In addition, the State must ensure that 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, during such time as the required revisions are being completed.

OSEP has identified your State as having submitted a complete eligibility document package and will make your FFY 2000 grant award based on an assurance from your State. The following represents an assurance that OSEP will accept:

[State] ensures that as soon as possible, but no later than March 2, 2001, it will resolve all of the issues identified in OSEP's review of the [State's] eligibility documentation.

[State] 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. [State] further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agencies provision of special education and related services that OSEP reviews, as a result of the State's eligibility documents.

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Your State should carefully consider who has authority to provide this assurance in light of changes to Part H and your own State's law. As in the past, the State education agency will continue to have primary authority and responsibility for ensuring that educational programs for children with disabilities meet the educational standards of the State, including the requirements of Part B.

In order to ensure a timely release of your FFY 2000 Part B grant award, please submit the assurance to Larry Wexler or me, as soon as possible. You may fax your assurance to (202) 205-9179.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Ms. Virginia Beridon
Assistant Superintendent
Office of Special Education Services
Louisiana Department of Education
P.O. Box 94064, 9th Floor
Baton Rouge, Louisiana 70804-9064

Dear Ms. Beridon:

The Office of Special Education Programs (OSEP) issued OSEP Memorandum 99-13 (June 19, 1999) and OSEP Memorandum 00-4 (November 3, 1999) to inform States of the procedures they were to follow in order to receive a grant for Federal Fiscal Year (FFY) 2000.

OSEP Memorandum 00-4 described the public participation requirements under the General Education Provisions Act (GEPA) and the Individuals with Disabilities Education Act (IDEA) regulations. The memorandum clarified that GEPA and the IDEA regulations require that States: (1) circulate their eligibility documents throughout the State for at least sixty days before they are submitted, with an opportunity for public comment to be accepted for at least thirty days; (2) hold public hearings on the proposed eligibility documents; and (3) review and consider the public comment before submitting those documents to the Department.

On April 14, 2000, OSEP received Louisiana's documents that were submitted in order to establish eligibility for participation in the IDEA Part B Grants to States program. Based on our review of Louisiana's April 14, 2000 submission, it appears that Louisiana only put its documents out for a 45-day comment period during which they accepted written comment from the public. This is inconsistent with the GEPA requirement that States must publish their eligibility documents in a manner that ensures circulation throughout the State for at least 60 days before they are submitted with at least 30 days for public comment. Rather than requiring you to repeat the entire 60-day process, we are requiring Louisiana to extend its comment period for an additional 15 days and accept and consider any comment received.

As explained in OSEP Memorandum 00-16, States with public participation problems must complete the required public participation activities as quickly as possible. However, awards of FFY 2000 funds to a State will not be delayed while these additional public participation activities are completed, as long as the rest of the State's submission is complete and the State provides the assurance described in OSEP Memorandum 00-16. Further information about the assurance will be issued shortly.

OSEP will not be able to determine whether your State's eligibility document submission is substantially approvable until we have been notified that all remaining public participation requirements have been met. If additional changes are made in your State's eligibility document submission, as a result of the additional public participation process, you must also resubmit the changed documents for approval.

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If OSEP's understanding of Louisiana's public participation process is incorrect, please provide documentation to clarify how Louisiana met the 60-day public participation period requirements. Should you have any questions, please feel free to contact Ruth Ryder at (202) 205-5547 or Larry Wexler at (202) 205-5390.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education
Programs



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202-

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MEMORANDUM

DATE: August 29, 2000

TO: GOVERNORS AND CHIEF STATE SCHOOL OFFICERS

FROM: Michael Cohen
Assistant Secretary for
Elementary and Secondary Education

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Assistant Secretary for
Adult and Vocational Education

Judith Heumann
Assistant Secretary for
Special Education and Rehabilitative Services

SUBJECT: Nonregulatory guidance pertaining to programs with advance appropriations in
FY 2000

We are writing to provide you with guidance regarding advance appropriations that affect some of our programs in the fiscal year 2000 Department of Education Appropriations Act (Public Law 106-113). Specifically, Congress appropriated a sum of funds for a number of Federal education programs but made only a portion available for obligation on July 1, 2000. The remaining funds do not become available for obligation until October 1, 2000. The grant awards we have recently sent you for the affected programs reflect only the amount of funds made available on July 1.

We have prepared the enclosed guidance for your information. We have attempted to provide State and local educational agencies with as much flexibility as possible consistent with applicable Federal budget and appropriations laws.

Please do not hesitate to contact us if you need additional clarification. We look forward to working with you as you implement Federal education programs during the upcoming school year.

Enclosure

Nonregulatory Guidance Pertaining to Programs with Advance Appropriations in FY 2000

Section I: General

Q1. What does it mean when Congress "advances" a portion of a program's appropriation?

A1. In the FY 2000 appropriations for a number of Federal education programs, Congress appropriated a sum of funds but made only a portion available for obligation on July 1, 2000. The remaining funds do not become available for obligation until October 1, 2000.

Advancing a portion of a program's appropriation in this manner allowed Congress to appropriate more money than otherwise would have been permitted under the annual budget caps designed to reduce Federal discretionary spending, because the advance appropriation (i.e., the amount that becomes available October 1) will count against the FY 2001 cap rather than the FY 2000 cap.

Q2. Which programs have advance appropriations in FY 2000?

A2. In the FY 2000 appropriations act, Congress passed an advance appropriation for the following programs:

PROGRAM	Amount available July 1	Amount available October 1
Education of the Disadvantaged (ESEA, Title I, Part A)	\$1,736,634,000	\$6,204,763,000
Safe and Drug-Free Schools and Communities--SEA and Governor Grants (ESEA, Title IV)	\$109,250,000	\$330,000,000
Class Size Reduction	\$400,000,000	\$900,000,000
Innovative Education Program Strategies--State Grants (ESEA, Title VI)	\$80,750,000	\$285,000,000
Reading Excellence Act	\$65,000,000	\$195,000,000
Vocational Education State Basic Grants	\$264,650,000	\$791,000,000
Individuals with Disabilities Education Act--Grants to States (Part B, section 611)	\$1,247,685,000	\$3,742,000,000

Q3. Because a portion of funds is not available until October 1, will a State receive two grant awards for FY 2000?

A3. Yes. For each affected program, the Department has issued, to States meeting the necessary legal requirements, an initial grant award obligating the State's portion of funds the appropriations act made available on July 1. The Department will issue supplemental awards for each affected program at the beginning of October obligating the remaining funds.

Q4. How does a State make grant awards to its subgrantees?

A4. Prior to October 1, a State may not award more funds than the Department has made available to the State from the "July 1 funds." Subject to this condition, however, a State has several options for awarding "July 1 funds" to its subgrantees. In most circumstances, a State, like the Department, would calculate each subgrantee's allocation and award a percentage of that allocation commensurate with the amount of "July 1 funds" available to the State. The State would then issue a supplemental grant after October 1 awarding the remaining funds. However, if the State knows that certain subgrantees will need more funds prior to October 1 than their initial award would provide, a State may award those subgrantees a larger percentage of the "July 1 funds," provided that doing so does not disadvantage the remaining subgrantees and that all subgrantees receive their correct share of the total funds appropriated in the FY 2000 appropriations act after the "October 1 funds" are awarded. There may also be circumstances in which a State would make full grant awards after October 1, 2000. For Title I Concentration Grants, no funds will be available for obligation until after October 1, 2000.

Q5. How long are the funds that become available on October 1 available for obligation by State and local recipients?

A5. With the exception of the Reading Excellence Act (REA) and the vocational education basic grant programs, the funds that become available on October 1, 2000 will be available for obligation by State

and local recipients through September 30, 2002. Note that the funds made available on July 1, 2000 also are available for obligation until September 30, 2002. This period of availability includes the initial period authorized by the appropriations act and an additional 12 months authorized by section 421(b) of the General Education Provisions Act (the "Tydings Amendment"). Thus, funds awarded on July 1 are available for obligation for 27 months, while funds awarded on October 1 are available for obligation for 24 months.

With respect to vocational educational basic grant funds, a State may make these funds available to subgrantees for only one academic year. A subgrantee must return any unexpended funds for the State to reallocate. The returned funds will be available for the State to reallocate and for new subgrantees to obligate until September 30, 2002.

With respect to REA funds, beginning with the date of its grant, a State has a three-year period during which to award the REA funds. The State may issue subgrants until the end of that three-year period. In issuing REA local reading improvement subgrants, the State must provide sufficient funds to an LEA to cover a two-year period. In issuing REA tuition assistance subgrants, the State may provide funds for up to a two-year period to an LEA.

- Q6. Must a State or subgrantee account for funds that become available on July 1 separately from funds that become available on October 1?
- A6. No. However, a State must be able to show that each subgrantee received its correct share of the total FY 2000-appropriated funds consistent with any statutory within-State formula applicable to a program. Moreover, if a State does not award pre-award costs to its subgrantees, the subgrantees must be able to demonstrate that their obligations prior to October 1 do not exceed their allocation of "July 1 funds."
- Q7. May a State use and permit a subgrantee to use funds it receives on or after October 1 to retroactively fund allowable pre-award costs it

may have incurred prior to October 1 in operating its school year 2000-2001 program or REA program?

- A7. Yes. In operating its school year 2000-2001 program or REA program, a State may use and may authorize a subgrantee to use funds it receives on or after October 1, 2000 to retroactively fund allowable pre-award costs it may have incurred between the date it was first authorized to begin obligating FY 2000 funds and October 1. (For example, for most States, the date they may begin obligating FY 2000 formula grant funds would be July 1. However, under 34 CFR 76.703, if a State plan were due and were not submitted in substantially approvable form in a timely manner, that State's authority to obligate Federal funds could be delayed.)

The obligation of pre-award costs is made at the State or local level on the first day of the supplemental grant or subgrant period--i.e., a date on or after October 1. They must be costs that would be allowable if incurred after the date of the award and must be approved, in writing, by the Department (in the case of State grants) or the State (in the case of State subgrants).

- Q8. If a program has a limitation on the amount of funds that may be carried over to the following fiscal year, how is that amount calculated?

- A8. Under Part A of Title I of the ESEA, a local educational agency (LEA) may not carry over to the 2001-2002 school year more than 15% of the basic and concentration grant funds it receives for FY 2000. Similarly, under the Safe and Drug-Free Schools and Communities Program, an LEA generally may not carry over more than 25% of the total amount it receives for FY 2000. These caps are calculated on the total allocation an LEA receives from its July 1 and October 1 installments.

Section II: Specific Program Issues

Safe and Drug-Free Schools and Communities Program (SDFSCA)

Q9. May a State educational agency (SEA) delay awarding "greatest need" funds until the SEA receives its supplements) grant award?

A9. Yes. Funds for greatest need (the 30% share) are made by SEAs to LEAs on a competitive basis. Therefore, an SEA may choose to award all of these funds after receipt of the "October 1 funds." However, an SEA may also choose to award some of the 30% share in July and the remainder of the 30% share in October.

Q10. Must Governors make two sets of grant awards to their subgrantees/contractors?

A10. States received their first "installment" of FY 2000 SDFSCA funds on or about July 1, 2000. The second installment will not be awarded to States until October 1, 2000. Since the Governor's funds can be awarded on a discretionary basis, the Governor may award funds based on needs and established priorities. Therefore, the Governor may choose to make one set of awards in July and another set of awards in October. However, should the Governor choose to award some of the funds in July, he/she may not award more than the total amount made available in the July installment.

Q11. Can Governors fully fund some of their subgrantees/contractors from the July installment and defer funding to others until October?

All. Yes. Again, the SDFSCA gives discretion to the Governor's program to establish funding periods that will meet appropriate funding priorities and needs.

Reading Excellence Act

Q12. What is the Reading Excellence Act (REA)?

A12. The REA is a competitive State grant program under which a State conducts two separate subgrant competitions among eligible LEAs. The REA program is subject to the Department's general administrative provisions governing direct grant programs (34 CFR Part 75).

Q13. May a State receiving REA funds distribute partial awards of funds to LEAs?

A13. As discussed in the response to question 4, a State may distribute funds to its subgrantees either in installments (following July 1 and October 1) or by fully funding only some subgrantees until the October 1 funds become available. At this time, however, the Department does not anticipate that any State receiving an FY 2000 REA award will have completed its subgrant competitions among the eligible LEAs or be prepared to issue subgrants under either REA subgrant competition prior to October 1, 2000.