



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

Honorable Delaine Eastin

AUG 19 1999

Superintendent of Public Instruction
State Department of Education
721 Capitol Mall
Sacramento, CA 95814

Honorable Robert Presley
Agency Secretary
Youth and Adult Correctional Agency
1 100 11 th St. 4th Floor
Sacramento, CA 95814

Dear Superintendent Eastin and Secretary Presley:

Enclosed with Superintendent Eastin's copy of this letter are your State's Part B section 611 (Grants to States) and 619 (Preschool Grants) grant awards for funds appropriated for Federal Fiscal Year (FFY) 1999 under Part B of the Individuals with Disabilities Education Act (IDEA) as amended by the Individuals with Disabilities Education Act Amendments of 1997 (Pub. L. No. 105-17, enacted June 4, 1997). These funds are for use in school year 1999-2000 and are available for obligation to States July 1, 1999 - September 30, 2000.

This award is based on your July 1, 1999 application for grant awards under Part B for FFY 1999, including California's assurance that throughout the period of the grant award, all public agencies in the State will comply with all of the requirements of Parts A and B of the IDEA, as amended by the IDEA Amendments of 1997, and is subject to the attached Special Condition set forth in Attachment A to this letter, which the Department is imposing pursuant to 34 C F R §80.12

The United States Department of Education (Department) has designated California as a high-risk grantee, and is imposing the Special Conditions set out in Attachment A pursuant to 34 CFR § 80.12, because of the State's long-standing failure to comply with the requirements of the IDEA. The Department's designation of the State as a high risk grantee and imposition of special conditions is based upon: (1) the California Department of Education's (CDE's) longstanding failure to exercise its general supervisory responsibility to ensure that public agencies in the State comply with the requirements of Part B; and (2) the California Department

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of Corrections' (CDC's) failure to ensure that a free appropriate public education (FAPE) is available to eligible inmates with disabilities in adult correctional facilities.¹

CDE has made some progress in correcting some of the deficiencies identified in the Office of Special Education Programs' (OSEP's) 1996 California Monitoring Report. As documented in OSEP's April 6, 1999 California Follow-up Monitoring Report and information submitted by CDE in May 1999, however, serious systemic noncompliance persists. OSEP's 1996 and 1999 monitoring reports document CDE's continuing failure to exercise its general supervisory responsibility over local school districts in the State, including CDE's failure to ensure that local school districts correct identified deficiencies in a timely manner. OSEP had documented many of these same deficiencies in its prior monitoring reports to CDE of 1988 and 1992. The 1999 Follow-up Monitoring Report documents that many of the previously identified findings remain uncorrected.

As a result of CDE's failure to meet its general supervisory responsibility, serious deficiencies have been allowed to exist for a number of years, impacting services for children with disabilities. CDE has permitted especially egregious noncompliance that resulted in the denial of essential services to persist for many years in the San Francisco, Los Angeles, and San Diego Unified School Districts. CDE's February 28, 1999 report to *OSEP* on the status of actions to correct the noncompliance identified in OSEP's 1996 California Monitoring Report provides clear documentation of the serious impact of the continuing noncompliance on students with disabilities. As documented in that report, in those three districts for the period of July-December 1999, there were: (a) 1,421 instances of children with disabilities not receiving all of the special education and related services set forth in their IEPs; (b) 12,077 students without current IEPs; and (c) 1,820 students without current reevaluations.

OSEP recognizes that it will take CDE more than a year to correct the deficiencies identified in its 1999 California Follow-up Monitoring Report regarding CDE's monitoring system, its methods to ensure that public agencies correct identified noncompliance, and the serious noncompliance in a number of public agencies regarding such requirements as the provision of FAPE, placement in the least restrictive environment (LRE), needed transition services, and reevaluation. The Department and CDE are currently working together toward the end of developing a compliance agreement under 20 USC 1234f to address those requirements regarding which it is not feasible for CDE to come into full compliance within this grant award period. Such a compliance agreement is necessary to ensure CDE's continued eligibility under the Part B program. It is anticipated that the Department will conduct one or more public hearings regarding the proposed compliance agreement within the next several months. Pursuant

¹ On June 5, 1997, in his Executive Order W-155-97, former Governor Wilson transferred from CDE to CDC the responsibility for ensuring that the requirements of the IDEA are met with respect to eligible youth who are convicted as adults under State law and are incarcerated in adult prisons.

to such an agreement, CDE could have up to three years within which to come into full compliance with the requirements of Part B of the IDEA.

The deficiencies identified in OSEP's 1999 California Follow-up Monitoring Report regarding CDE's procedures for resolving complaints can, however, be corrected within this grant award period, and the Department is therefore imposing Special Conditions on this grant award requiring CDE to correct those deficiencies as soon as possible, but no later than June 30, 2000.

We are encouraged by recent actions taken by the State to begin to correct the serious noncompliance. We understand that: (1) CDE is in the process of developing, and beginning to implement, a new monitoring system; (2) the State Legislature and Governor have recently made an additional \$2.8 million available to CDE for the specific purpose of monitoring compliance with special education requirements; and (3) CDE is working to expand its options for taking enforcement action to ensure that public agencies correct identified noncompliance. We believe that these are important first steps toward achieving compliance with the requirements of Part B.

As set forth in its 1996 Monitoring Report, OSEP found that California was not making special education services available to eligible youth with disabilities in any of California's adult correctional facilities. The 1996 Monitoring Report required that the State take corrective action. To date, the State has not ensured that a free appropriate public education is made available to all eligible youth with disabilities in adult correctional facilities. Therefore, the Department designates the State as a high-risk grantee that has failed to conform to the terms of previous awards with respect to this obligation.

Pursuant to 34 C.F.R. §80.12, the Department is imposing the Special Conditions contained in Attachment A of this letter. Consistent with §80.12(c), the Attachment and letter provide the State with notice of: (1) the nature of the special conditions; (2) the reasons for imposing them; (3) the corrective actions that must be taken before these Special Conditions will be removed and the time allowed for completing the corrective actions; and (4) the method of requesting reconsideration of the Special Conditions.

California must administer this award both in keeping with the applicable provisions of Federal law and regulations, and the Special Conditions attached to the grant award document. Acceptance by California of this grant award constitutes an agreement by the State to: (1) ensure compliance with all the requirements and of the IDEA Amendments of 1997 and applicable regulations; and (2) meet the Special Conditions, within the timelines set forth in Attachment A.

The IDEA Amendments of 1997 made substantial changes to the method by which the Department calculates State awards. To assist you with the changes to sections 611 and 619 that affect funds appropriated for FFY 1999, we have provided the total State allocation for sections 611 and 619 and the amount (of those totals) that the State may set aside, with a short description

of how those funds may be used. With regard to the section 611 grant, we have also identified how much the State must use for capacity building and improvement subgrants to local education agencies (LEAs) and the purposes of these subgrants. For the section 619 grant, we have identified the base amount the State must allocate to LEAs based on what they received in 1997 and the amount that must be distributed according to population and poverty. An explanation of these calculations is set forth in Attachment B to this letter and the actual amounts for your State can be found on the attached Table I (section 611) and Table II (section 619).

These awards are based on CDE's submission, on July 1, 1999, of a signed assurance statement regarding implementation of the provisions of the Individuals with Disabilities Education Act Amendments of 1997 that affect State implementation for the 1999-2000 school year, our receipt of your State's annual data, completed ED Form 80-0013, and your annual report describing how funds under section 611(f)(1) will be used. The above documents, as well as the Office of Special Education Programs Memorandum 99-5, must be made available for public inspection.

Acceptance by California of this grant award constitutes an agreement by the State to:

- 1.) ensure compliance with all the requirements of the IDEA Amendments of 1997, including the requirement that a free appropriate public education is available to all eligible youth with disabilities in adult correctional facilities; and
- 2) meet the enclosed Special Conditions.

Congress enacted the Charter School Expansion Act (Act) on October 22, 1998. Among other things, the Act added a requirement under section 10306 of the Elementary and Secondary Education Act (ESEA). Section 10306 requires that the Secretary and each SEA take measures to ensure that charter schools opening for the first time or significantly expanding their enrollment receive the Federal funding for which they are eligible. States must meet the requirements of section 10306 of the ESEA when distributing FFY1999 funds under the Grants to States and the Preschool Grants programs. On May 18, 1999, the Secretary of Education published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to implement the amendments to the ESEA made by the Act. OSEP sent a memorandum to Chief State School Officers describing a State's responsibility under section 10306 of the ESEA, the provisions of the NPRM, and various options available to States for making allocations to charter schools under Part B of the Individuals with Disabilities Education Act.

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

Sincerely,

Judith E. Heumann
Secretary

Attachment and Enclosures

Cc: Dr. Alice Parker