



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF CAREER, TECHNICAL, AND ADULT EDUCATION

AUG 9 2019

The Honorable Katy Anthes Ph.D.  
Commissioner of Education  
Colorado Department of Education  
201 East Colfax, Room 500  
Denver, CO 80203

Dear Commissioner Anthes:

The purpose of this letter is to confirm receipt and acceptance of the Corrective Action Plan (CAP) submitted by the Colorado Department of Education (CDE) to the U.S. Department of Education's Division of Adult Education and Literacy (DAEL) on August 8, 2019. The plan addresses all required actions and recommendations from DAEL's State Program Review and Technical Assistance Report submitted to CDE on April 29, 2019. DAEL will monitor the CAP, and upon completion, forward a final letter to indicate that all actions have been completed and the plan is closed.

We appreciate the work and diligence that CDE has demonstrated in developing a well thought-out and comprehensive plan of action. We look forward to working with CDE as it implements the plan, achieves milestones, and improves adult education for the students of Colorado. Please feel free to contact Stephanie Washington at (202) 245-6952 or [Stephanie.Washington@ed.gov](mailto:Stephanie.Washington@ed.gov) should you have any question.

Sincerely,

Karla Ver Bryck Block  
Monitoring and Administration Team Leader  
Office of Career, Technical, and Adult Education  
U.S. Department of Education

cc: Danielle Ongart  
Stephanie M. Washington

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*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

**United States Department of Education  
State Virtual Program Review Report  
Colorado Department of Education  
October 18-19, 2018**

Staff from the United States Department of Education’s Office of Career, Technical, and Adult Education (OCTAE) conducted a virtual program review to the Colorado Department of Education (CDE) October 18 and 19, 2018. This report addresses the implementation of the competition and continuation award process for the Adult Education and Family Literacy Act (AEFLA), title II of the Workforce Innovation and Opportunity Act (WIOA), by CDE. The findings and required actions are based on reviews of State documents and interviews with a State official. The review team used the *State Review Protocol* module four to guide the review process. This review was not exhaustive; budget and financial items in other modules may be subject to additional review at a later date.

CDE must address the requirements of WIOA, by submitting a Corrective Action Plan (CAP) for the required actions contained in this report. Responses to recommendations, while optional, are strongly encouraged.

**Findings and Required Actions**

**Finding 1: CDE incorrectly applied demonstrated effectiveness to determine an applicant’s eligibility to apply for funding.**

**Relevant sections of law and regulation:** Sections 203(5) and 231 of WIOA; 34 CFR §§ 463.23 and 463.24

**Required Action 1(a):** CDE must revise its AEFLA grant application to require applicants to address all factors necessary to establish demonstrated effectiveness, as described in 34 CFR § 463.24.

**Required Action 1(b):** CDE must submit to OCTAE its revised AEFLA grant application, including all administrative procedures and documents related to the competitive application and awards process, for review and approval prior to release to the public for the Program Year (PY) 2020 AEFLA competition.

**Required Action 1(c):** After obtaining review and approval of its revised AEFLA grant application, CDE must conduct a new grant competition and award grants no later than July 1, 2020, consistent with the conclusion of the grant period established in the PY 2017 competition, and must ensure that it properly considers demonstrated effectiveness of all applicants, consistent with 34 CFR § 463.24, during the process of determining applicant eligibility.

**Discussion:** Sections 203(5) and 231 of WIOA require that an eligible provider applying for AEFLA funds must be an organization of demonstrated effectiveness. CDE conducted a competition for AEFLA funds for PYs 2017-2019 and issued 24 awards. However, a review of the grant application revealed that the competitive process did not comply with certain WIOA

statutory and regulatory provisions. Specifically, CDE did not determine if applicants were organizations of demonstrated effectiveness and therefore eligible to apply for AEFLA funds, as described in WIOA section 203(5) and 34 CFR § 463.24, prior to reviewing and scoring applications. The monitoring team reviewed CDE's application policies and procedures and while the grant application stated that eligible providers "must demonstrate effectiveness in providing adult education and literacy activities", the grant application and supporting documents did not require that an eligible provider submit past performance data in the domains of reading, writing, mathematics, and English language acquisition. Further, the application did not require applicants to submit data on the outcomes for participants related to employment, attainment of secondary school diploma or its recognized equivalent, and transition to postsecondary education and training. Therefore, CDE did not determine that an application was from an organization of demonstrated effectiveness, but rather CDE permitted all applications to be reviewed and considered for funding.

**Finding 2: CDE did not include all 13 considerations in the selection criteria in the grant application used for scoring applications and awarding grants to subrecipients.**

**Relevant sections of law and regulations:** Section 231(e) of WIOA; 34 CFR § 463.20

**Required Action 2(a):** CDE must indicate clearly in its application materials and application review panel criteria that all 13 required considerations in 34 CFR § 463.20(d) apply with respect to all applicants and must ensure that reviewers take all 13 considerations into account when reviewing each application.

**Required Action 2(b):** CDE must submit to OCTAE its revised AEFLA grant application, including all administrative procedures and documents related to the competitive application and awards process, for review and approval prior to being released to the public for the PY 2020 AEFLA competition (see also Required Action 1(b), under which CDE is also required to submit the revised grant application to OCTAE for review and approval).

**Discussion:** State agencies are required to consider certain factors under section 231(e) when awarding grants or contracts for AEFLA funds. While the grant application required eligible providers to address some of the 13 required considerations, not all considerations were included in the selection criteria and evaluation rubric. Two considerations were omitted. First, the selection criteria did not consider how applicants would address the ability of eligible providers to serve eligible individuals with disabilities, including eligible individuals with learning disabilities. Second, CDE did not require in the grant application that applicants indicate whether the local area in which they are located have a demonstrated need for additional English acquisition programs and civics education.

**Finding 3: CDE did not maintain sufficient documentation of its application review procedures, in accordance with the requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).**

**Relevant sections of law and regulations:** Uniform Guidance 2 CFR §§ 200.333 and 200.336

**Required Action 3:** CDE must provide evidence to OCTAE that it has developed, documented, and implemented internal controls that meet federal records retention requirements, including how it will retain all original competition materials including score sheets for the required period.

*Discussion:* In accordance with the Uniform Guidance requirements relating to records retention, State agencies are required to maintain all “financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award” for a period of three years from the date of the submission of the final expenditure report (2 CFR § 200.333). The federal review team noted that the CDE did not submit complete competition documentation for the review. Specifically, the State did not submit any documentation from applications that were either determined to be ineligible or were unsuccessful in the competition. As a follow-up during the review, the federal team asked CDE for additional competition documentation to better understand the review and scoring processes. An interview with CDE staff confirmed that not all supporting documentation from the competition had been retained in the CDE’s files. Therefore, CDE did not meet the record keeping requirements of the Uniform Guidance.

**Finding 4: CDE did not properly identify State-imposed requirements and misidentified a federal requirement in its grant application materials.**

**Relevant section of law and regulation:** Section 223(c) of WIOA

**Required action 4(a):** CDE must submit to OCTAE its revised AEFLA grant application, including all administrative procedures and documents related to the competitive application and awards process, for review and approval prior to release to the public for the PY 2020 AEFLA competition (see also Required Actions 1(b) and 2(b), under which CDE is also required to submit the revised grant application to OCTAE for review and approval).

**Required action 4(b):** In its PY 2019 continuation process and materials, CDE must properly identify State-imposed requirements and correct inaccurate statements contained in its grant application pertaining to federal requirements and provide the revised documents to all subrecipients.

*Discussion:* During the PY 2017 competition, CDE included State-specific requirements in the grant application. However, those requirements were not identified as State-imposed as required by section 223(c) of WIOA. For example, CDE required applicants to provide comprehensive services. Additionally, eligible providers were required to demonstrate a 40 percent match of funds. The grant application FAQs also incorrectly stated that “CDE has a federal requirement to fund programs in each federally recognized workforce area.” States are able to include specific requirements in their grant application, but those requirements must be properly identified as State-imposed.

**Finding 5: CDE violated the AEFLA direct and equitable access requirements by requiring that applicants request a State-determined minimum funding level in the PY 2017 grant application in order to be considered eligible.**

**Relevant section of law and regulation:** Section 231(c) of WIOA

**Required Action 5(a):** If CDE decides to set a requirement for a minimum budget request, which has the potential to affect eligible providers' direct and equitable access to apply for funds, its WIOA Unified State Plan or Combined State Plan, as applicable, and the AEFLA PY 2020 grant application must include information that provides a reasonable basis for the requirement, such that it is not limiting direct and equitable access (e.g., the WIOA State Plan and AEFLA grant application might include a description of the analysis of the State's differing workforce and/or population needs as support for requiring eligible providers to seek at least a specific minimum grant award).

**Required Actions 5(b):** If CDE decides to set such requirement as described in Required Action 5(a), then CDE must submit to OCTAE its revised AEFLA grant application, including all administrative procedures and documents related to the competitive application and awards process, for review and approval prior to release to the public for the PY 2020 AEFLA competition (see also Required Actions 1(b), 2(b), and 4(a), under which CDE is also required to submit the revised grant application to OCTAE for review and approval).

**Discussion:** State agencies are required to provide all eligible providers with direct and equitable access to apply and compete for AEFLA funds. CDE's PY 2017 grant application described the available funds to eligible providers to carry out AEFLA activities. CDE anticipated an allocation of \$5.2 million for adult education and literacy activities and an additional \$750,000 for Integrated English Literacy and Civics Education (IELCE). To ensure that AEFLA activities were provided throughout the State, CDE anticipated awarding 20-30 grants. However, in the grant application and competition materials, CDE specified a required funding range of \$100,000 - \$500,000. In response to questions about the eligibility of an application that did not meet the \$100,000 minimum, the Frequently Asked Questions (FAQs) document indicated that if an applicant's budget was below the minimum threshold, the applicant had the option of serving more than one local workforce area, applying as a consortium, or sub-granting funds in order to meet the minimum threshold requirement. Such a response indicated that the State would deem ineligible any application that did not meet the funding threshold. State representatives did not provide OCTAE with a documented rationale for the funding minimums. Therefore CDE might have denied certain eligible providers direct and equitable access to apply for AEFLA funds, in contravention of the statutory requirements in WIOA section 231(c).

**Finding 6: CDE did not issue grant award notifications to subrecipients in accordance with the requirements of the Uniform Guidance.**

**Relevant section of law and regulation:** Uniform Guidance 2 CFR § 200.331(a)

**Required Action 6(a):** CDE must revise its current program year grant award notifications to include all elements that are required in the Uniform Guidance.

**Required Action 6(b):** CDE must submit the draft revised grant award notification to OCTAE for review and approval.

**Required Action 6(c):** CDE must re-issue corrected grant award notifications for the current program year to all subrecipients.

**Discussion:** State agencies are required to provide notification to subrecipients of AEFLA awards of the requirements of a pass-through entity described in the Uniform Guidance at 2 CFR §200.331(a). CDE provided each AEFLA subrecipient a grant award notification which included the terms and conditions of receiving federal funds. However, CDE did not include all elements of a pass-through entity as required. Specifically, the grant award notification did not include the restricted indirect cost rate for the federal award. Also, even though the grant award notifications that CDE issued specified that terms and conditions may be modified by issuance of an updated grant award letter, CDE does not have a documented annual grant continuation process that meets the requirements of Uniform Guidance at 2 CFR §200.331.

**Finding 7: CDE improperly stated indirect cost terminology in its Frequently Asked Questions (FAQs) document.**

**Relevant section of law and regulation:** Education Department General Administrative Regulations 34 CFR §§ 76.563 - 76.564

**Required Action 7(a):** CDE must revise its current program year FAQs and budget guidelines to reflect correct language about indirect costs and issue the guidelines to the local providers in the current program year.

The AEFLA program is a supplement, not supplant program which means a restricted indirect cost rate must be calculated and used. CDE’s FAQs stated “An agency that is requesting indirect costs must have an approved indirect cost plan with the federal agency. If the agency does not have an approved indirect cost plan, under the Uniform Grant Guidance an agency can requires a de minimis rate of 10%.” The de minimis rate is not an allowable indirect cost rate when a restricted rate is required by programs, such as AEFLA, that prohibit the use of federal funds to supplant non-federal funds.

### **Recommendations**

**CDE should clearly identify all of the eligible activities listed in Section 225 on the application form.**

CDE included section 225 activities in the PY 2017 grant application. The eligible activities were described in the Purpose section of the grant application, however those activities were not provided in the application form. Whenever CDE is describing eligible AEFLA activities in the PY 2020 competition, OCTAE encourages CDE to be consistent in including and describing those activities throughout the grant application.

### **Submission of a Corrective Action Plan (CAP)**

CDE must email a CAP based on this report to [Karla.VerBryckBlock@ed.gov](mailto:Karla.VerBryckBlock@ed.gov) and [Stephanie.Washington@ed.gov](mailto:Stephanie.Washington@ed.gov), within 45 calendar days of receipt of this report, as dated on our electronic mailing to the state agency. The CAP must address how CDE plans to address the required actions. Responses to each required action must contain: strategies, evidence of action completed, date of completion, assigned staff, and status of the action. Although States are not required to do so, we strongly encourage your State to include actions for the recommendations of this report in the CAP.

Thank you for a very informative review and technical assistance visit. We look forward to continuing our work with you, as we prepare every adult for a successful future.

*U.S. Department of Education Review Team*

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Monitoring and Administration Team Leader	Area II Coordinator
Division of Adult Education and Literacy	Division of Adult Education and Literacy