



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

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OSEP – 04-03

MEMORANDUM

TO : Chief State School Officers

FROM : Stephanie Smith Lee, Director *Patricia J. Grant for*
Office of Special Education Programs

SUBJECT : Procedures for States to Follow in Order to Receive a Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA) for Federal Fiscal Year 2004

ACTION REQUIRED : Submission of Eligibility Documents by April 9, 2004

The purpose of this memorandum is to inform States of the procedures they are to follow in order to receive grant awards under sections 611 and 619 of the IDEA for Federal Fiscal Year (FFY) 2004 (i.e., the grant period beginning July 1, 2004).

The Documents that Each State Must Submit

To demonstrate eligibility for the grant period from July 1, 2004 through June 30, 2005, each State must ensure that the State has on file with the Secretary policies and procedures (including relevant statutes, regulations, or other documents) that demonstrate that the State meets all of the eligibility requirements of section 612(a) of the IDEA. A State may do this through one of the two following options:

- (1) Assuring, as part of its FFY 2004 Part B Submission Statement, that: (a) the State has on file with the U.S. Secretary of Education policies, procedures, and assurances that have been approved by the Office of Special Education Programs (OSEP) as meeting the eligibility requirements of Part B of the Act, including policies, procedures, and

assurances filed before July 1, 1998, and no changes to the previously submitted policies, procedures, and assurances are necessary; and (b) therefore, the State is not submitting modifications to the policies and procedures on file with the Secretary; or

- (2) Submitting revisions or changes to the eligibility documents that were previously approved by OSEP and on file with the Department.

OSEP will find that a State has established eligibility for Part B funds for FFY 2004 if the policies and procedures on file with the Department, including any revisions or changes submitted by the State, are consistent with the State eligibility requirements as set forth in section 612(a) of the IDEA and the Part B regulations, published on March 12, 1999.

If the State has on file with the Secretary policies and procedures that have been approved by the Secretary as demonstrating that the State meets the requirements of 34 CFR §300.110, including policies and procedures filed under Part B as in effect before the enactment of the IDEA Amendments of 1997, the Secretary will consider the State to have met the requirements of 34 CFR §300.111.

Attached to this memorandum is a checklist that includes all of the Part B requirements regarding policies and procedures that States must have on file with the Secretary. Where a State is proposing revisions in any of its previously submitted eligibility documents, the State must indicate, in the appropriate sections of the checklist, the specific document(s), and location(s) within each document that is or will be revised. This detailed information is important in facilitating OSEP's review of the eligibility documents that each State submits. Please note that a State may not meet an eligibility requirement by addressing that requirement only in the checklist (or any other document), unless the State has subjected that document to the public participation process described below.

It is important that each State submit all of the documents that are necessary to meet the State eligibility requirements of section 612(a), including any statutes, regulations, interagency agreements, or other documents that are referenced in another document that the State submits. It is not, however, necessary that each State submit all of its forms, training materials, etc., unless the State's eligibility documents are not, without these additional documents, sufficient to meet the eligibility requirements. In other words, each State is required to submit only those documents that are necessary to establish the State's eligibility. The public participation process described later in this memorandum applies to revisions as well as to initial submissions.

For a State to be eligible to receive Part B funds, it must demonstrate, to the satisfaction of the Secretary, that it "... has in effect policies and procedures to ensure that it meets the conditions in §§300.121-300.156." 34 CFR §300.110(a). As explained in 34 CFR §300.110(b), the State must have on file with the Secretary:

The information specified in §§300.121-300.156 that the State uses to implement the requirements of Part B; and

Copies of all applicable State statutes, regulations, and other State documents that show the basis of that information.

To determine what documentation each State must have on file with the Secretary to meet the eligibility requirements of each of the provisions in 34 CFR §§300.121-300.156, the State should review the specific requirements in each of those provisions. For example, 34 CFR §300.127 requires States to have on file "... in detail the policies and procedures" to ensure compliance with the confidentiality requirements at 34 CFR §§300.560-300.576. As another example, 34 CFR §300.141 requires that the information that each State must have on file to show that the State is meeting the general supervision requirements of 34 CFR §300.600 must include "... a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other documents that show compliance with [those requirements]."

Each State must ensure that it has authority under State law to enforce any eligibility document that it uses to meet a Part B State eligibility requirement for which the State must ensure compliance by other agencies, such as local educational agencies or other State agencies. Thus, for example, a State may use a Procedural Safeguards Notice to meet the State eligibility requirements at 34 CFR §§300.500-300.529, only if it has authority under State law to use that Notice to require that all public agencies in the State comply with those requirements.

Each State must also submit a signed, dated copy of the Submission Statement that is attached to this memorandum. Please note that a State may meet the following State eligibility requirements with that signed assurance, and, unless specifically requested by OSEP, will not need to submit additional documents to meet these requirements: (1) §300.130(b) (requiring that the State's mechanism for distributing State special education funds not result in placements that violate Part B's least restrictive environment provisions); (2) §300.148 (regarding public participation); (3) §300.150 (regarding State advisory panel); (4) §300.152 (regarding commingling); (5) §300.153 (regarding State-level nonsupplanting); and (6) §300.154 (regarding maintenance of State financial support). Consistent with section 604 of the IDEA, each State accepting a grant under the IDEA expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

ED Form 80-0013

In addition to ensuring that the State has on file with the Secretary policies and procedures demonstrating that the State meets all of the eligibility requirements of section 612(a) of the IDEA, each State must also ensure that the State has on file with the Department a completed and signed ED Form 80-0013 that will be in effect throughout the period of the FFY 2004 grant award. Most States already have a signed copy of this form on file with the Department, and only need to resubmit the form if the State determines that the form that is on file no longer binds the State.

Description of Use of Funds Under Part B

Section 611(f)(5) of the IDEA Amendments of 1997 requires that, beginning with funds appropriated for fiscal year 1998, States must annually, in order to receive a Part B grant, submit to OSEP a description of:

- (A) how amounts retained under section 611(f)(1) will be used to meet the requirements of Part B;
- (B) how those amounts will be allocated among the activities described in section 611(f)(2) and (3) to meet State priorities based on input from local educational agencies; and
- (C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.

States must use the attached form, entitled *Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act*, to report this information. In completing the form, each State must indicate -- for each of the activities listed in Sections 611(f)(2) and (3) of the IDEA -- the percentage, if any, of the State's total allocation under Section 611 for FFY 2004 that will be used for that activity. (As indicated on the form, the State may substitute another clear measure of the amount that will be used for each activity.) As set forth in 34 CFR §300.156(b), if a State's plans for use of its funds under 34 CFR §§300.370 and 300.620 do not change from the prior year, the State may submit a letter to that effect in lieu of submitting a *Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act* form for that year. Please note that the percentages that a State records on this form must be the percentage of the State's total 611 (school-aged) Part B grant that the State will retain for each purpose. (Also note that under the current formula, the amount that a State may retain expressed as a percentage of the total grant will decrease in any year in which the rate of increase in total appropriations exceeds the rate of inflation. In those years, a change in the information on the form will likely be necessary.) The Department will provide States with an estimation of the amount and percentage of funds that each State will be permitted to retain under 34 CFR §§300.370 and 300.620.

Description Required By Section 427 of the General Education Provisions Act

Each State must also have on file with the Department a description of the steps the State proposes to take to ensure equitable access to, and participation in, activities conducted under Part B, by addressing the special needs of students, teachers, and other program beneficiaries in order to overcome barriers to equitable participation, including barriers based on gender, race, color, national origin, disability, and age, as required by §427 of the General Education Provisions Act (GEPA). This description must identify barriers and develop strategies to address the barriers. A notice regarding compliance with §427 is attached to this memorandum. If OSEP has previously approved a State's description under §427 and the State has not revised that description, it need not submit the description again.

Public Participation Requirements that States Must Meet

The public participation requirements relevant to Part B are set forth in the Part B regulations, at 34 CFR §§300.148 and 300.280-300.284, and in §441(b)(7) of GEPA (20 U.S.C. 1232d(b)(7)(B)). (A copy of those regulatory and statutory provisions is attached to this memorandum.) In summary, they require that before a State adopts or revises any policies or procedures that are required to comply with Part B, including all of the State eligibility requirements under 20 U.S.C. 1412(a), the State educational agency (SEA) must:

Consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute.

Publish the policies and procedures that the State proposes to adopt or revise in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the State will submit those proposed policies and procedures to OSEP, or on which the plan becomes effective, whichever occurs earlier, with an opportunity for the general public to comment on the policies and procedures for at least thirty days. The State must ensure that the policies and procedures are available for comment for a period of at least 30 days following the date on which it provides notice that it will conduct public hearings (see next paragraph).

Conduct public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate, and provide adequate notice to the general public of the public hearings. Such notice must:

- Be in sufficient detail to inform the general public about -- (i) the purpose and scope of the State policies and procedures and their relation to Part B of the Act; (ii) the availability of the State policies and procedures; (iii) the date, time, and location of each public hearing; (iv) the procedures for submitting written comments about the policies and procedures; and (v) the timetable for submitting the policies and procedures to the Secretary for approval.
- Be published or announced -- (i) in newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and (ii) enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

In addition, the State must review and consider all public comments, and make any necessary modifications in those policies and procedures.

Please note that the Part B regulations further provide, at 34 CFR §300.148(a)(2), that a State will be considered to have met the public participation requirements of 34 CFR §300.148(a)(1), with regard to a policy or procedure needed to comply with Part B, if it can

demonstrate that, prior to the adoption of that policy or procedure, the policy or procedure was subjected to a public review and comment process that is required by the State for other purposes and is comparable to and consistent with the requirements of 34 CFR §§300.280-300.284.

Also, once we approve a State's policies and procedures, the SEA must give notice in newspapers or other media, or both, that the policies and procedures are approved. The notice must name places throughout the State where the policies and procedures are available for access by any interested person.

Eligibility documents that a State will use to meet State eligibility requirements are subject to the public participation requirements described above. This includes, for example, content from a Biennial Performance Report or an unfunded State Improvement Grant application.

Please note, however, that when OSEP requires a State to make specified revisions in procedures that the State has previously taken through the public participation process described above, the State need not again take those revisions through the public participation process. Thus, if a State had taken the information it submits regarding its Comprehensive System of Personnel Development (needs assessment and improvement strategies) through public participation before submitting it as part of its FFY 2004 eligibility document submission, the State would not need to take OSEP-required revisions to that information through the public participation process.

Submission of Eligibility Documents

States should submit an original of the documents necessary to demonstrate eligibility, which must be received by OSEP by April 9, 2004 to:

Gwendolyn A. Gage
Management and Program Analyst
Monitoring and State Improvement Planning Division
Office of Special Education Programs
United States Department of Education
Mary E. Switzer Building
330 C Street, SW, Room 3617
Washington, DC 20202-2640

For your convenience, the Application may be submitted to this Office electronically formatted in Microsoft Word. The Application will be available on the internet at <http://www.ed.gov/funds/grants/apply/osep/index.html>. If you wish to submit the Application by e-mail, please send it to Gwendolyn Gage at Gwendolyn.Gage@ed.gov. OSEP requires an original signature on the "Submission Statement and Assurances" to be sent by mail.

It would facilitate our review if you would also submit an original and two copies of each document.

Due Date; Effective Date of Grant

Consistent with 34 CFR §76.703(a)(1), the Department has established April 9, 2004, as the submission date for all documents necessary to demonstrate eligibility for FFY 2004 grant awards under sections 611 and 619 of IDEA. As explained below, pre-award costs will only be provided consistent with the provisions of 34 CFR §76.703 (a copy of which is attached to this memorandum). Therefore, the effective date of a grant to a State that does not submit substantially approvable eligibility documents to OSEP by April 9, 2004, may be later than July 1, 2004.

The provisions of the Education Department General Administrative Regulations (EDGAR), at 34 CFR §76.703, apply to grant awards under Part B of the IDEA. Section 76.703 implements the requirements of the Cash Management Improvement Act (CMIA), 31 U.S.C. §6503, and its implementing regulations at 31 CFR Part 205, which provide for the timely transfer of funds between Federal agencies and States, and authorizes payment of interest where transfers are not made in a timely fashion. The following is a description of the process that OSEP will use to implement §76.703, with respect to processing FFY 2004 grant awards under Part B.

Section 76.703 limits the circumstances under which the Department will retroactively authorize a State to charge against the Part B grant program costs incurred before the Department determines an application to be substantially approvable. That regulation provides that, generally, a State may not begin to obligate funds under a program until the later of the following two dates:

- (1) the date the Secretary determines that the application is substantially approvable; or
- (2) the date that the funds are first available for obligation by the Secretary. 34 CFR §76.703(d) and (e).

Consistent with the requirements of §76.703, grant award notification forms will indicate the start of the grant award period for applications received prior to July 1, 2004, as the later date of either: (1) the date that the Secretary determines that the State application is substantially approvable; or (2) the date that the funds are first available for obligation by the Secretary (i.e., July 1, 2004).

If a State has submitted a substantially approvable application by the April 9, 2004 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2004. If the Department receives a State's substantially approvable application after the April 9,

2004 deadline, but before July 1, 2004, the starting date for obligating funds will be July 1, 2004, provided that the Department is able to determine that the application is substantially approvable prior to July 1, 2004. If the Department is unable to determine that the application is substantially approvable prior to July 1, 2004, the starting obligation date will be determined in accordance with the procedures in 34 CFR §76.703(e)(2).

If the Department receives a State's application after July 1, 2004, or the application that the State submits is not substantially approvable, the grant award notification will indicate, as the start of the Federal funding period, the date when the Department determines that the application is substantially approvable.

For purposes of Part B applications for FFY 2004, an application is "substantially approvable" when it meets, to the Department's satisfaction, the requirements in this application package. An application will not be "substantially approvable" until OSEP receives any clarifications, amendments or assurances requested by OSEP.

Conclusion

As explained in this memorandum, it is important that, before submitting its eligibility documentation for FFY 2004, each State ensures that it has:

- Made all of the required revisions described in the FFY 2003 grant award letter;
- Included all of the required documents in the State's FFY 2004 eligibility documentation;
- Included a completed checklist, that indicates, in the appropriate sections of the checklist, the specific document(s), and location(s) within each document, in which the State has made revision(s);
- Met the 60-day public participation requirements for all eligibility documentation, as described in this memorandum;
- Included a signed, dated copy of the form, *Description of the Use of Funds under Part B of the Individuals with Disabilities Education Act*, or, if a State's plans for use of its funds under 34 CFR §§300.370 and 300.620 do not change from the prior year, included a letter to that effect; and
- Included a submission statement that is dated, and signed by the appropriate State official.

Please let me know if my staff or I may assist you in implementing the requirements of the IDEA and demonstrating eligibility for FFY 2004 grants under sections 611 and 619 of the IDEA.

Attachments:

- Annual State Application Under Part B of the Individuals With Disabilities Education Act for Federal Fiscal Year 2004 (CFDA Nos. 84.027 and 84.173)
 - Cover Page; Part I (Submission Statement for Part B of IDEA) and Part II (Description of Use of Funds Under Part B of IDEA)
 - Part III—Modifications to State Policies and Procedures (Checklist)
- Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Work Place Requirements (ED 80-0013)
- Notice to All Applicants Regarding GEPA Section 427
- EDGAR 34 CFR §76.703; When A State May Begin To Obligate Funds

cc: State Directors of Special Education
Regional Resource Centers
Federal Resource Center
National Early Childhood Technical Assistance Center