



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

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OSEP 08-02

MEMORANDUM

TO: Chief State School Officers
State Director of Special Education

FROM: Patricia J. Guard, Acting Director *Patricia J. Guard*
Office of Special Education Programs (OSEP)

SUBJECT: Procedures for Receiving a Federal Fiscal Year (FFY) 2008 Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA) as Amended in 2004

ACTION

REQUIRED: Submission of Part B Application Packet by Friday, May 16, 2008

The purpose of this memorandum and enclosed Application is to inform State education agencies (SEAs) of the procedures they are to follow in order to receive a grant under Part B of IDEA as amended in 2004, for FFY 2008 funds that we anticipate will become available to States on July 1, 2008.¹

The enclosed packet contains instructions and forms needed for completion of a Part B State Application. The Application is available on the Internet at <http://www.ed.gov/fund/grant/apply/osep/2008apps.html>. The completed Application, with supporting information, should be submitted on or before May 16, 2008.

¹ As of the date of this memorandum, the Department has only received short term funding for Federal Fiscal Year (FFY) 2008 through a Continuing Resolution. However, we do not anticipate the basic funding structure of this program will change.

Final regulations implementing Part B of the IDEA were issued on August 14, 2006 (71 Fed. Reg. 46540) and became effective on October 13, 2006. States are required to ensure that their State policies, including statutes and regulations, are consistent with the final Part B regulations. Where States are revising State policies to be consistent with the final Part B regulations, States should pay particular attention to the public participation requirements outlined in Section V of this memorandum. We expect States to make every effort to revise State policies consistent with their assurances provided in the FFY 2007 Application for funds and the final regulations issued August 14, 2006. If a State is unable to make any required changes it should explain the circumstances and provide the timeline for completing the needed revisions.

I. Procedures States are to Follow in Order to Receive a Part B Grant Award for FFY 2008

For the FFY 2008 grant period for July 1, 2008 through September 30, 2009, the Department is asking States to: 1) read the Instruction Sheet; 2) carefully review the eligibility requirements found in the *Technical Assistance Checklist* at <http://www.ed.gov/fund/grant/apply/osep/2008apps.html>; 3) determine which assurances, in Section II, the State can and/or cannot make; 4) provide certifications found in Section II; 5) complete the Description of Use of Funds "Excel Interactive Spreadsheet" as instructed in Section III; 6) provide an appropriate submission statement(s) found in Section I; and 7) follow the public participation requirements found in Section V of this letter. States should carefully consider who has the authority to provide the assurances and certifications in light of the changes to the IDEA, as amended in 2004, the final regulations issued August 14, 2006, and the State's laws and regulations.

As noted above, States are expected to make any necessary revisions to State policies to become consistent with the final Part B regulations. However, even if a State cannot provide all assurances found in the Application, the SEA still is responsible for ensuring that all public educational programs for children with disabilities in the State meet the education standards of the State, and for complying with the requirements of Part B (see 20 U.S.C. 1412) and the final regulations issued August 14, 2006.

When a State adopts revised or new policies or procedures to come into compliance with IDEA 2004 or the final regulations issued August 14, 2006, the State must ensure that there are public hearings, adequate notice of the hearings and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities as described in Section V of this memo.

II. Summary of Eligibility Requirements

A summary of the State eligibility requirements for Part B for July 1, 2008 through September 30, 2009 is found in the *Technical Assistance Checklist* at <http://www.ed.gov/fund/grant/apply/osep/2008apps.html>. This document is provided to assist you in your review of State policies and procedures as you determine which Assurances you can and cannot make in Section II.A of the Application, and to provide easy reference to other legal requirements relevant to Sections II.B and C and III.

III. Description of Use of Funds Under Part B

20 U.S.C. 1411(e)(5) (See also 34 CFR §300.171) requires that, in order to receive a Part B grant, States must annually submit to OSEP a description of:

- (A) how amounts retained under section 20 U.S.C. 1411(e) will be used to meet the requirements of Part B;
- (B) how those amounts will be allocated among the activities described in 20 U.S.C. 1411(e)(1) and (2) to meet State priorities based on input from local educational agencies; and
- (C) dollar amounts, if any, that will be distributed to local educational agencies by formula.

States must use the "Excel Interactive Spreadsheet" to report this information. In completing the spreadsheet, each State must indicate -- for each of the activities listed in 20 U.S.C. 1411(e)(1) and (2) of the IDEA -- dollar amounts, if any, of the State's total allocation under section 611 for FFY 2007 that will be used for that activity. The Department will provide States with an estimation of the amount and percentage of funds that each State will be permitted to retain under 20 U.S.C. 1411(e)(1) and (2).

When completing the "Excel Interactive Spreadsheet," States should be aware that some minimum and maximum funding requirements are related to the amount that a State actually sets-aside for administration and whether it uses funds for the Risk Pool.

States also need to describe, in this Section, the process used to get input from LEAs regarding distribution of amounts described in the spreadsheet.

IV. 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 section 427 of the General Education Provisions Act (GEPA). This description must identify barriers and strategies to address the barriers. A notice regarding compliance with section 427 is attached to this memorandum. If OSEP has previously approved a State's description under section 427 and the State has not revised that description, it need not submit the description again.

V. 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 §300.165 and in §441(b)(7) of GEPA (20 U.S.C. 1232d(b)(7)(B)). In accordance with the GEPA requirement, the State must assure that it will provide reasonable opportunities for participation by local agencies, representatives of the class of individuals affected by this program and other interested institutions, organizations, and individuals in the planning for the operation of this program.

GEPA requires that the State publish each proposed plan, in a manner that will ensure circulation throughout the State, at least 60 days prior to the date on which the plan is submitted to the Secretary or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least 30 days. The Education Department

General Administrative Regulations (EDGAR) at 34 CFR §76.102 makes clear that the Part B Applications are considered State plans.

34 CFR §300.165 requires that States conduct public hearings, ensure adequate notice of those hearings and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures needed to comply with Part B.

Therefore, prior to submitting your Part B Application for funds, your State must publish the Application for at least 60 days and accept public comment for at least 30 days. In addition, if your State is adopting new or revised policies and procedures related to Part B, your agency must also conduct public hearings on the new or revised policies and procedures, providing adequate notice of the hearings, and affording an opportunity for comments from the public. The State must review and consider all public comments and make any necessary modifications to the Application or policies and procedures, as appropriate.

VI. Conditional Approval of FFY 2007 Application

A number of States received 'conditional approval' of their FFY 2007 Applications. In most cases the State's conditional approval was based solely on the fact that the State was not able to make all of the assurances required in Section II.A of the Application (*i.e.*, the State could not check 'yes' for all of the assurances in that section). If a State's conditional approval was based on the State not being able to check 'yes' for all of the assurances in Section II of the Application, the State should complete the Section II.B.1, and update Section II of the Application to reflect changes it has made and changes that it may need to make, including changes needed based on the final regulations.

States that received conditional approval based on other issues (such as changes to State policies and procedures that OSEP required based on OSEP's review of State policies and procedures from pre-FFY 2007 Applications) should complete Section I.B.2 and may need to submit specific documentation to address those conditions. (Thus, some States may need to complete both Sections I.B.1 and I.B.2.) It is preferable that required documentation to address any issues that are not specific to the Section II assurances be sent to OSEP prior to the FFY 2008 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted no later than the FFY 2008 Application submission timeline, or, if a different date is specified in the State's FFY 2007 grant letter, that timeline. If the documentation includes any revisions in the State's policies and procedures needed to comply with Part B, including changes to State laws and regulations, States are reminded that they must comply with the public participation requirements in 34 CFR §300.165 in making those changes. (See Section V of this memo.)

VII. State Administration

When addressing Section IV of the Application, State Administration, States must attach to the Application a list identifying any rules, regulations, or policies that are State-imposed (not required by IDEA or Federal regulations). In addition, the State is required to inform local education agencies in writing of such State-imposed rules, regulations or policies. 20 U.S.C. 1407(a). If your State does not have any such rules, regulations or policies, please include a statement to that effect.

VIII. Submission of Application Packet

States must submit an original signed and dated copy of the documents necessary to demonstrate eligibility, which must be received by OSEP on or before May 16, 2008 to:

United States Department of Education
ATTN: Janet Scire, Mail Stop 2600
7100 Old Landover Road
Landover, MD 20785-1506

For your convenience, a copy of your Application may be submitted to this Office electronically formatted in Microsoft Word. The Application is available on the Internet at <http://www.ed.gov/fund/grant/apply/osep/2008apps.html>. If you wish to submit a copy of your Application by e-mail, please send it to OSERS.bapp@ed.gov. (Electronic submission may speed the review and, if needed correction, process.) However, we do not have a secure electronic signature mechanism and we must have a hard-copy fully and correctly completed Application, **with an original signature** prior to making a grant. (Copies of the signed documents may be faxed to OSEP, at (202) 245-7614 to the attention of Janet Scire. Documents with original signatures **must** follow in the mail.)

If corrections are needed to your Application, we will require that the revised version be appropriately signed and dated (i.e., after the revisions were made) and that we receive the revised version, including a new original signature page prior to making the grant.

IX. Due Date / Effective Date of Grant

The provisions of 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, 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.

Consistent with 34 CFR §76.703(a)(1), the Department has established May 16, 2008, as the submission date for all documents necessary to demonstrate eligibility for FFY 2008 grant awards under 20 U.S.C. 1411 and 1419 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 a substantially approvable Application to OSEP by May 16, 2008, may be later than July 1, 2008.

Consistent with the requirements of 34 CFR §76.703, grant award notification forms will indicate the start of the grant award period for Applications received prior to July 1, 2008, 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, 2008).

If a State has submitted a substantially approvable Application by the May 16, 2008 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2008. If the Department receives a State's substantially approvable Application after the May 16, 2008 deadline, but before July 1, 2008, the starting date for obligating funds will be July 1,

2008, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2008. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2008, 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, 2008, 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 2008, 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.

X. Conclusion

As explained in this memorandum, it is important that, before submitting its Application for FFY 2008, each State ensures that it has:

- Provided an appropriate submission statement(s) found in Section I.A, and, if appropriate, I.B;
- Indicated which assurances, in Section II. A, the State can and/or cannot make;
- Provided the assurances in Section II. B;
- Provided the certifications found in Section II. C (*Note: States submitted ED Form 80-0013, Certification Regarding Lobbying, with the State's 2005 Application. Therefore the first certification found in Section II. C, Certifications, should be marked 'yes'.*);
- Completed and signed the Statement found in Section II. D.;
- Completed the Section III, including the Description of the Use of Funds in the "Excel Interactive Spreadsheet";
- Completed Section IV as appropriate;
- Met Part B's public participation requirements as described in this memorandum; and
- Submitted a hard-copy of the fully and correctly completed Application, **with an original signature.**

Should you need assistance in implementing the requirements of IDEA and/or meeting the Application requirements for FFY 2008 grants under Part B contact your Part B State Contact and/or Regional Resource Center.

Attachments:

- Annual State Application Under Part B of the Individuals With Disabilities Education Act for Federal Fiscal Year 2008 (CFDA Nos. 84.027A and 84.173A)
- Notice to All Applicants Regarding GEPA section 427
- EDGAR 34 CFR §76.703 – When A State May Begin To Obligate Funds

cc: Regional Resource Centers
Federal Resource Center
National Early Childhood Technical Assistance Center