



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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OSEP 06 - 04

MEMORANDUM

TO: Chief State School Officers
State Director of Special Education

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

SUBJECT: Procedures for Receiving a Federal Fiscal Year (FFY) 2006 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, April 21, 2006

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 2006 funds that will become available to States on July 1, 2006.

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/2006apps.html>. The completed Application, with supporting information, should be submitted on or before April 21, 2006.

Upon receipt and approval of the required certifications and information in the Application, the State will be eligible to receive FFY 2006 Part B funds.

I. Procedures States are to Follow in Order to Receive a Part B Grant Award for FFY 2006

For the FFY 2006 grant period for July 1, 2006 through June 30, 2007, 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/2006apps.html>; 3) determine which assurances, in Section II, the State can and/or cannot make; 4) provide certifications found in Section II; 5) complete, as instructed, the Use of Funds information 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, and the State's laws and regulations.

Until the SEA can provide all assurances found in the Application the SEA is responsible for ensuring that educational programs for children with disabilities in the State meet the education standards of the State, including the requirements of Part B (see 20 U.S.C. 1412).

Consistent with 20 U.S.C. 1404 of the IDEA, as amended in 2004, each State, by accepting a grant under Part B of the IDEA expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

II. Summary of Substantive Changes

A summary of the substantive statutory changes that affect State eligibility requirements to the IDEA, as amended in 2004, that are relevant to State implementation of Part B for July 1, 2006 through June 30, 2007 is found in the *Technical Assistance Checklist* at <http://www.ed.gov/fund/grant/apply/osep/2006apps.html>. The column titled 'Description of Changes' provides a summary of the substantive statutory changes that apply to the eligibility requirements found in PL 108-446.

III. Description of Use of Funds Under Part B

20 U.S.C. 1411(e)(5) requires that States must annually, in order to receive a Part B grant, 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 enclosed form, entitled *Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act – 20 U.S.C. 1411(e)(5)*, to report this information. In completing the form, 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 2005 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 Section III, *Description of Use of Funds Under Part B of the Individuals with Disabilities Education Act – 20 U.S.C. 1411(e)(5)*, 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. The Department will be reviewing this in its monitoring of States.

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 §§300.148 and 300.280-300.284, 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. (See 20 U.S.C. 1232d(b)(7).)

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. Further, GEPA requires the State to hold public hearings on the proposed plans if required by the Secretary by regulation. The Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.102 makes clear that the Part B applications are considered State plans.

The Part B regulations at 34 CFR §300.280 require that States conduct public hearings before adopting policies and procedures related to 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 at times and places throughout the State to afford interested parties an opportunity to participate pursuant to the public hearing and related requirements at 34 CFR §§300.280 through 300.284. The State must then review and consider all public comments and make any necessary modifications to the policies and procedures.

Since many States have indicated that they will not be adopting revised policies and procedures at this time, those States will not need to conduct public hearings. However, all States will need to make their Part B applications available for 60 days and must accept comment for 30 days. When a State adopts revised or new policies and procedures to come into compliance with IDEA 2004, then the State must make its revised or new policies and procedures available for 60 days, accept comment for 30 days, and conduct public hearings as described above.

VI. Conditional Approval of FFY 2005 Application

As noted above, any State that received a grant award letter conditionally approving its FFY 2005 Application must provide OSEP with appropriate documentation to demonstrate that the conditions and other criteria outlined in the FFY 2005 grant award letter have been met. It is preferable that documentation to address the FFY 2005 conditional approval be sent to OSEP prior to the FFY 2006 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted with the FFY 2006 Application submission unless a different date is specified in the State's FFY 2005 grant letter. If the documentation includes any revisions in the State's policies and procedures, assurances, methods of implementation, or State law or regulations related to Part B implementation, States must comply with the public participation requirements 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)).

VII. State Administration

When addressing Section IV, State Administration, of this application States must attach, to the application, a list identifying any rule, regulation, or policy that is 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, regulation or policy. 20 U.S.C. 1407(a).

VIII. Submission of Application Packet

States should submit an original of the documents necessary to demonstrate eligibility, which must be received by OSEP on or before April 21, 2006 to:

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

For your convenience, the 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/2006apps.html>. If you wish to submit the Application by e-mail, please send it to OSERS.bapp@ed.gov. OSEP requires an original signature on the "Submission Statement and Assurances" to be sent by mail and the Application will not be determined as received by OSEP under the Cash Management Improvement Act (CMIA) and the Education Department General Administrative Regulations (EDGAR), at 34 CFR §76.703, until OSEP receives the signed *Submission Statement and Assurances*. (Copies of the signed documents may be faxed to OSEP, at (202) 245-7614 to the attention of Rex Shipp. Documents with original signatures must follow in the mail.)

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 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.

Consistent with 34 CFR §76.703(a)(1), the Department has established April 21, 2006, as the submission date for all documents necessary to demonstrate eligibility for FFY 2006 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 substantially approvable application to OSEP by April 21, 2006, may be later than July 1, 2006.

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, 2006, 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, 2006).

If a State has submitted a substantially approvable application by the April 21, 2006 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2006. If the Department receives a State's substantially approvable application after the April 21, 2006 deadline, but before July 1, 2006, the starting date for obligating funds will be July 1, 2006, provided that the Department is able to determine that the application is substantially approvable prior to July 1, 2006. If the Department is unable to determine that the application is substantially approvable prior to July 1, 2006, 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, 2006, 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 2006, 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 2006, each State ensures that it has:

- Met Part B's public participation requirements as described in this memorandum;
- Completed, as instructed, the Use of Funds information in Section III;
- Completed Section IV as appropriate;
- Indicated which assurances, in Section II A, the State can and/or cannot make and provided documentation as appropriate;
- Provided certifications found in Section II B (*Note: States submitted ED Form 80-0013, Certification Regarding Lobbying, with the State's 2005 Application. Therefore the first certification found in Section II B, Certifications, should be marked 'yes'.*);
- Provided an appropriate submission statement(s) found in Section I;
- Provided OSEP with appropriate documentation to demonstrate that any conditions outlined in the State's FFY 2005 grant award have been met; and
- Completed and signed the Statement found in Section II C.

Should you need assistance in implementing the requirements of IDEA, as amended in 2004, and/or meeting the Application requirements for FFY 2006 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 2006 (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
- Part B State Allocation Table.

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