



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

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OSEP 05 -05

**MEMORANDUM**

**TO:** Chief State School Officers

**FROM:** Stephanie Smith Lee, Director  
Office of Special Education Programs (OSEP) *Stephanie Smith Lee*

**SUBJECT:** Procedures for Receiving a Federal Fiscal Year (FFY) 2005 Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA) as Amended in 2004 and the Changes that Affect those Procedures

**ACTION**

**REQUIRED:** Submission of Part B Application Packet by Monday, May 9, 2005

The purposes of this memorandum and enclosed Application are to: 1) 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 2005 funds which will become available to States on July 1, 2005; and 2) summarize the relevant changes in Part B, as set forth in IDEA as amended in 2004, Public Law 108-446, December 3, 2004, that affect States' implementation of Part B for the 2005-2006 school year.

The enclosed packet contains instruction and forms needed for completion of a Part B FFY 2005 State Application. The Application is available on the Internet at <http://www.ed.gov/fund/grant/apply/osep/2005apps.html>. The completed Application, with supporting information, should be returned on or before May 9, 2005.

Upon receipt and approval of the required assurances, certifications, and information in the Application the State will be eligible to receive FFY 2005 Part B funds.

**I. Procedures States are to Follow in Order to Receive a Part B Grant Award for FFY 2005**

For the grant period for July 1, 2005 through June 30, 2006, the Department is asking States to: 1) read the Instruction Sheet; 2) carefully review the eligibility requirements found in Section IV of the enclosed Application packet; 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; and 6) provide an appropriate submission statement(s) found in Section I. 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 law.

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 accepting a grant under the IDEA expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

## **II. Summary of Substantive Changes**

A summary of substantive 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, 2005 through June 30, 2006 is found in Section IV, *Optional Technical Assistance Checklist – Eligibility Requirements found in PL 108-446*, of the enclosed Part B Application. The column titled 'Description of Changes' provides the substantive changes that apply to the eligibility requirements found in PL 108-446.

## **III. ED Form 80-0013**

In addition to the assurances and information in Sections II and III, each State must also ensure that the State has on file with the Department a completed and signed ED Form 80-0013, *Certification Regarding Lobbying*, that will be in effect throughout the period of the FFY 2005 grant award. ED Form 80-0013 has been revised and a copy of the revised form is attached to this memorandum. A newly completed and signed form is required as part of the State's FFY 2005 Application submission.

## **IV. 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; and
- (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.

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 -- the percentage, if any, of the State's total allocation under Section 611 for FFY 2005 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.) Please note that the percentages that a State records on this form must be the percentage of the State's total 20 U.S.C. 1411 (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 shown 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 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.

## **V. 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 develop 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.

#### **VI. 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, 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 60 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.

## VII. Conditional Approval of FY 2004 Application

Any State that received a grant award letter conditionally approving its FFY 2004 Application must provide OSEP with appropriate documentation to demonstrate that the conditions and other criteria outlined in the FFY 2004 grant award letter have been met. It is preferable that documentation to address the FFY 2004 conditional approval be sent to OSEP prior to the FFY 2005 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted by the FFY 2005 Application submission date unless a different date is specified in the State's FFY 2004 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)).

## VIII. Submission of Application Packet

States should submit an original of the documents necessary to demonstrate eligibility, which must be received by OSEP by May 9, 2005 to:

United States Department of Education  
ATTN: Gwendolyn A. Gage, 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/2005apps.html>. If you wish to submit the Application by e-mail, please send it to [OSERS.bapp@ed.gov](mailto:OSERS.bapp@ed.gov). Since OSEP requires an original signature on the Statement found in Section II.C of the Application and on the ED Form 80-0013, *Certification Regarding Lobbying*, these two pages must be received either by FedEx or US mail by the deadline date of May 9, 2005. 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 Statement and ED Form 80-0013. (Copies of the signed documents may be faxed to OSEP, at (202) 245-7614 to the attention of Gwendolyn A. Gage. Documents with original signatures must follow in the mail.)

It would facilitate our review if you would also submit an original and two copies of each document that is not submitted electronically.

## 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 May 9, 2005, as the submission date for all documents necessary to demonstrate eligibility for FFY 2005 grant awards under 20 U.S.C. 1411 and 1419 of IDEA. As explained below, pre-award costs will only be available 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 May 9, 2005, may be later than July 1, 2005.

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, 2005, 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, 2005).

If a State has submitted a substantially approvable application by the May 9, 2005 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2005. If the Department receives a State's substantially approvable application after the May 9, 2005 deadline, but before July 1, 2005, the starting date for obligating funds will be July 1, 2005, provided that the Department is able to determine that the application is substantially approvable prior to July 1, 2005. If the Department is unable to determine that the application is substantially approvable prior to July 1, 2005, 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, 2005, 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 2005, 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 2005, each State ensures that it has:

- Met Part B's public participation requirements, if required, as described in this memorandum;
- Completed, as instructed, the Use of Funds information in Section III;
- 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;
- 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 2004 grant award have been met;
- Completed and signed a ED Form 80-0013 (which has been revised) as part of the State's FFY 2005 Part C Application submission.); 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 2005 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 2005 (CFDA Nos. 84.027A and 84.173A)
- Certification Regarding Lobbying (ED 80-0013)
- 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: State Directors of Special Education  
Regional Resource Centers  
Federal Resource Center  
National Early Childhood Technical Assistance Center