



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

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OSEP 05-06

MEMORANDUM

TO: Lead Agency Directors
Part C Coordinators

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 C of the Individuals with Disabilities Education Act (IDEA) as Amended in 2004 and the Changes that Affect those Procedures

ACTION REQUIRED: Submission of Part C Application Packet by Monday, May 2, 2005

The purposes of this memorandum and enclosed Application are to: 1) inform Lead Agencies (LAs) of the procedures they are to follow in order to receive a grant under Part C 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 to Part C, as set forth in IDEA as amended in 2004, Public Law 108-446, December 3, 2004, that affect State's implementation of Part C early intervention programs during FFY 2005.

The enclosed packet contains instruction and forms needed for completion of the FFY 2005 Part C 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 2, 2005.

Upon receipt and approval of the certifications, policies, procedures, methods, descriptions, assurances and other information required by the Application, the State will be eligible to receive FFY 2005 Part C funds.

I. Procedures Lead Agencies are to Follow in Order to Receive a Part C Grant Award for FFY 2005

For the grant period for July 1, 2005 through June 30, 2006, the Department is asking Lead Agencies to: 1) read the Instruction Sheet; 2) carefully review the application requirements found in Section V of the enclosed Application packet; 3) determine which certifications, policies, procedures, methods, descriptions, and assurances, in Section II, the State can and/or cannot provide; 4) provide certifications found in Section II; 5) complete, as instructed, the Use of Funds information in Section III; 6) complete Section IV as appropriate; and 7) 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 LA can provide all policies, procedures, methods, descriptions, and assurances found in the Application the LA is responsible for ensuring that appropriate early intervention services are available to all infants and toddlers with disabilities in the State including the requirements of Part C (see 20 U.S.C. 1435).

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 the State Part C statutory application requirements (highlighting the substantive changes made by P.L. 108-446) for July 1, 2005 through June 30, 2006 is found in Section V, *Optional Technical Assistance Checklist – Application Requirements found in PL 108-446*, of the enclosed Part C Application. The column titled 'Description of Changes' provides the substantive statutory changes that apply to the Part C application requirements found in PL 108-446.

III. ED Form 80-0013

In addition to ensuring that the State has on file with the Secretary certifications, policies, procedures, methods, descriptions, and assurances demonstrating that the State meets all of the application requirements of 20 U.S.C. 1435 and 1437 of PL 108-446, 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. 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 Packet submission.

IV. Description of Use of Funds Under Part C

Each State's Application must include a description of how a State proposes to use its funds under Part C. States should follow the instructions found in Section III of the enclosed Instruction Sheet. Include computations showing that the amounts on each page equal the total for that page, and that the totals from each section add up to the total estimated grant amount.

Although the Secretary is not required during FFY 2005 to reserve funds as described in 20 U.S.C. 1443(e), States may still, under 20 U.S.C. 1435(c), make available to eligible children and their families early intervention services consistent with 20 U.S.C. 1435(c), after the child turns three, provided that the State has submitted for the Secretary's approval its policies and procedures implementing 20 U.S.C. 1435(c).

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 C, by addressing the special needs of eligible infants and toddlers with disabilities and their families, 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 Lead Agencies Must Meet

The public participation requirements in 34 CFR §§303.110-303.113 and section 441 of the General Education Provisions Act (GEPA) apply to Lead Agencies submitting Part C Applications. 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).)

States are required to meet the public participation requirements under Part C and GEPA for both changes in Applications required by this Department, and relevant changes that the State makes on its own. Prior to the adoption of a new or revised policy or procedure that is not in the State's current Part C Application, a State must publish the Application with the revised policy in a manner that will ensure a 60-day circulation of the Application throughout the State, provide 30-day notice of the public hearings, conduct the public hearings, and provide an opportunity for at least 30 days for comment from the general public, including individuals with disabilities and parents of infants and toddlers with disabilities. The lead agency must review and consider all public comments and make any modifications it deems necessary in the Application or policy.

VII. Conditional Approval of FY 2004 Application

As noted above, 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 with the FFY 2005 Application submission unless a different date is specified in the State's FFY 2004 grant letter. If the documentation includes any revisions in the State's certifications, policies and procedures, descriptions, assurances, methods of implementation, or State law or regulations related to Part C implementation, States must comply with the public participation requirements of 34 CFR §§303.110-303.113.

VIII. Submission of Application Packet

Lead Agencies should submit an original of the State's Application, which must be received by OSEP by May 2, 2005 to:

U.S. 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 Gwendolyn Gage at OSERS.capp@ed.gov. Since OSEP requires an original signature on the Statement found in Section II.D 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 2, 2005. The Application will not be determined as received by OSEP under the Cash Management Improvement Act and 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.

IX. Due Date / Effective Date of Grant

The provisions of the Education Department General Administrative Regulations (EDGAR), at 34 CFR §76.703, apply to grant awards under Part C 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.

Consistent with 34 CFR §76.703(a)(1), the Department has established May 2, 2005, as the submission date for all documents necessary to demonstrate eligibility for FFY 2005 grant awards under Part C of the IDEA. As explained below, pre-award costs are only available consistent with the provisions of the CMIA and EDGAR at 34 CFR §76.703. See Appendix C. Therefore, the effective date of a grant to a State that does not submit a substantially approvable Part C Application to OSEP by May 2, 2005, may be later than July 1, 2005.

Consistent with the requirements of 34 CFR §76.703, grant award notification forms will indicate the effective date 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 2, 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 2, 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 C Applications for FFY 2005, an Application is "substantially approvable" when it meets, to the Department's satisfaction, the requirements in this Application packet. An Application will not be "substantially approvable" until OSEP receives any clarifications, amendments, certifications, policies, procedures, descriptions, methods and/or assurances requested by OSEP.

X. Conclusion

As explained in this memorandum, it is important that, before submitting its Part C Application for FFY 2005, each State ensure that it has:

- Met Part C's public participation requirements, if required, as described in this memorandum;
- Completed, as instructed, the Use of Funds information in Section III;
- Completed Section IV as appropriate;
- Indicated which certifications, policies, procedures, methods, descriptions, and assurances, in Section II A-B, the State can and/or cannot make and provide documentation as appropriate;
- Provided certifications found in Section II C;
- 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

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- Completed and signed the Statement found in Section II D.

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 C, contact your Part C State Contact and/or Regional Resource Center.

Attachments:

- Federal Fiscal Year 2005 Annual State Application Under Part C of the Individuals with Disabilities Education Act (CFDA No. 84.181A)
- 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 C State Allocation Table

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