



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

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OSEP 09-06

**MEMORANDUM**

**TO:** Lead Agency Directors  
State Part C Coordinators

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

**SUBJECT:** Procedures for Receiving a Federal Fiscal Year (FFY) 2009 Grant Award Under Part C of the Individuals with Disabilities Education Act (IDEA) as Amended in 2004

**ACTION**

**REQUIRED:** Submission of Part C Application Packet by May 18, 2009

The purpose of this memorandum and enclosed Application is to inform State lead agencies of the procedures they must follow in order to receive a grant award under Part C of the IDEA for FFY 2009 funds that OSEP anticipates will become available to States on July 1, 2009.<sup>1</sup>

The enclosed packet contains instructions and forms needed for completion of a Part C State Application. The Application is also available on the Internet at <http://www.ed.gov/fund/grant/apply/osep/2009apps.html>. The completed Application, with supporting information, must be submitted on or before May 18, 2009 in order to ensure that your State's FFY 2009 IDEA Part C grant funds are available for obligation on July 1, 2009.

Although the draft final Part C regulations were withdrawn by the Department on Friday, January

<sup>1</sup> As of the date of this memorandum, the Department has only received short-term funding for Federal Fiscal Year (FFY) 2009 through a Continuing Resolution. However, we do not anticipate a change to the basic funding structure of this program.

16, 2009, States are required to ensure that their State policies, including statutes and regulations, are consistent with the Part C requirements in 20 U.S.C. §§1401 *et seq.*, as amended in 2004, and all applicable regulations in 34 CFR Part 303. If your State is adopting a new or revised policy to meet these Part C requirements, please review the public participation requirements in Section 4 of this memorandum to ensure compliance with those requirements. Upon receipt and approval of the certifications and other information required by the FFY 2009 Part C Application, the State lead agency will be eligible to receive its FFY 2009 Part C funds.

**1. Procedures States Must Follow to Receive a Part C Grant Award for FFY 2009.**

For the FFY 2009 grant period for July 1, 2009 through June 30, 2010, the Department is asking each lead agency 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/2009apps.html>;
- 3) Determine which policies, procedures, methods, descriptions, and assurances in Section II that the State can and/or cannot provide in Section II and attach any policies, procedures, methods or descriptions that are checked as new or revised in Section II-A for the policies, procedures, methods or descriptions that must be part of the State's Application in Section II-A;
- 4) Provide appropriate submission statement(s) found in Section I;
- 5) Provide the certifications found in Section II-C;
- 6) Complete, as instructed, the Use of Funds information in Section III, including making sure that the sum total of all amounts budgeted for each part in Section III adds up to the total amount the State is requesting of its FFY 2009 Part C allotment;
- 7) Complete Section IV regarding system of payments and indirect costs and attach a copy of all appropriate documents including a cost allocation plan, restricted indirect cost rate agreement or proposal or other documentation; and
- 8) Follow the public participation requirements found in Section 4 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 State can provide all policies, procedures, methods, descriptions, and assurances found in the Application, the State and lead agency are responsible for ensuring that early intervention services are available to all infants and toddlers with disabilities in the State and implementing the requirements of Part C (see 20 U.S.C. 1435).

Consistent with 20 U.S.C. 1404 of the IDEA, each State and lead agency, by accepting a grant under Part C of the IDEA, expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

## **2. 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 children with disabilities and their families 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.

## **3. Description of Use of Funds Under Part C**

Each State's Application must include a description of how the State lead agency and State Interagency Coordinating Council propose to use the State's allotment of FFY 2009 grant funds under Part C. States should follow the instructions found in Section III (Use of Funds) of the enclosed Instruction Sheet. States must 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.

## **4. Public Participation Requirements that Lead Agencies Must Meet**

The public participation requirements in 34 CFR §§303.110-303.113 apply to lead agencies submitting Part C Applications. Before submitting its FFY 2008 Part C application, the State must publish its Part C application 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. Under 34 CFR §303.113(b), each State must submit with its Part C Application a copy of its notice of circulation within the State of its Part C Application.

Further, before a State adopts a new or revised policy that is not contained in, but required to be part of, its Part C application the State must: (1) publish its new or revised policy at least 60 days prior to the date on which the policy is submitted to the Secretary or on which it is to become effective, whichever occurs earlier, with an opportunity for public comments on such policy to be accepted for at least 30 days; and (2) hold public hearings on the new or revised policy during the 60-day period (with notice of the hearings provided at least 30 days prior to the hearings) under 34 CFR §303.110(a)(2) and (3). (See Section II.A. for a list of those policies and procedures that must be submitted with the application.) Under 34 CFR §303.113(b), each State must submit with its Part C Application a copy of any notice(s) of public hearings required to be held under 34 CFR §303.110(a)(2) and (3).

## **5. Conditional Approval of FFY 2008 Application**

A number of States received 'conditional approval' of their FFY 2008 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.A of the Application, the State must complete Section I.B.1 of the Application, and update Section II of

the Application to reflect changes it has made and changes that it may need to make.

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 FFY 2008 or pre-FFY 2008 Applications) should complete Section I.B.2 of the Application 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 of the Application.) It is preferable that required documentation to address any issues that are not specific to the Section II.A of the Application assurances be sent to OSEP prior to the FFY 2009 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted no later than the FFY 2009 Application submission timeline, or, if a different date is specified in the State's FFY 2008 grant letter, that timeline. If the documentation includes any revisions in the State's policies and procedures needed to comply with Part C, including changes to State laws and regulations, States are reminded that they must comply with applicable public participation requirements identified in Section 4 of this memorandum.)

#### **6. System of Payments/Use of Insurance/Program Income; Restricted Indirect Cost Rate/Cost Allocation Plan Information**

When completing Section IV.A, States are asked to place a check in one of the two blanks provided. By entering a check in the appropriate blank, the State is indicating whether the State does or does not have a system of payments for Part C services under 20 U.S.C. 1432(4)(B). If the State indicates that it does have a system of payments for Part C services, it must ensure that the system of payments is on file with the Department or submit such policies under Section II.A. of the Application. A system of payments may include policies governing the use of public insurance and benefits, private insurance, or family fees, such as a sliding scale, to pay for Part C services. If the State has adopted or revised its existing policies and procedures regarding its system of payments, it must submit these policies and procedures under Section II of the Application after subjecting such policies to the appropriate public participation requirements identified in Section 4 of this memorandum.

When completing Section IV.B, lead agencies that are not State educational agencies (SEAs) (as well as any outlying area that has the Department of Interior as its cognizant Federal agency, even if an SEA) must provide the requested information on indirect costs in Section IV.B. of the Application and submit with the State's Part C application, updated copies of appropriate documentation such as a restricted indirect cost rate agreement or cost allocation plan.

#### **7. Submission of Application Packet/Due Date**

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 18, 2009 to:

United States Department of Education  
Office of Special Education Programs  
Potomac Center Plaza  
Mail Stop 2600, Room 4129  
550 12<sup>th</sup> Street SW  
Washington, DC 20202

For your convenience, an unofficial copy of your Application and any supporting documents may also 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/2009apps.html>. If you wish to submit an unofficial copy of your Application and any supporting documents by e-mail, please send it to [OSERS.capp@ed.gov](mailto:OSERS.capp@ed.gov).

Electronic submission, either by e-mail or fax, may speed the review and, if needed correction, process. However, because we do not have a secure electronic signature mechanism, we must receive a full and complete hard-copy Application, **with an original signature** by the due date of May 18, 2009, and in no event, prior to making a grant. Regardless of whether a State sends an electronic or faxed copy of its Application and any supporting documents, the submission date of a State's Application and any supporting documents is the date that OSEP receives the hard-copy Application with an original signature.

If corrections are needed to your Assurances or Certifications (Sections II.A, II.B and II.C of the Application), we will require that the revised version be appropriately signed and dated (i.e., after the revisions were made) and that we receive a hard-copy revised version, including a new original signature page, prior to making the grant. If your State is required to submit a revised hard-copy version with a new original signature, the submission date of your Application will be the date OSEP receives this revised version.

As discussed more fully in Section 8 of this memorandum, the submission date may affect the date on which OSEP determines under 34 CFR §76.703 whether a State's application is substantially approvable and therefore, may affect the date that funds are first available for obligation. Therefore, it is very important that States submit all documents necessary to demonstrate eligibility in the format described in this Section no later than May 18, 2009.

#### **8. Effective Date of Grant**

The provisions of 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, 31 U.S.C. §6503, and its implementing regulations in 31 CFR Part 205, which together provide for the timely transfer of funds between Federal agencies and States, and authorize 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 18, 2009, as the submission date for all documents necessary to demonstrate eligibility for FFY 2009 grant awards under 20 U.S.C. 1444 of IDEA. As provided for in 34 CFR §76.703(c)(1), the submission date is the date by which OSEP must receive all documents necessary to demonstrate eligibility.

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 18, 2009, may be later than July 1, 2009.

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, 2009, 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, 2009).

If a State has submitted a substantially approvable Application by the May 18, 2009 deadline, the

Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2009. If the Department receives a State's substantially approvable Application after the May 18, 2009 deadline, but before July 1, 2009, the starting date for obligating funds will be July 1, 2009, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2009. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2009, 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, 2009, 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 2009, 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.

## 9. Conclusion

As explained in this memorandum, it is important that, before submitting its Application for FFY 2009, each State ensures that it has:

- Provided an appropriate submission statement(s) found in Section I.A, and, if appropriate, I.B of the Application;
- Indicated which assurances, in Section II.A of the Application, the State can and/or cannot make;
- Provided the assurances in Section II.B of the Application;
- Provided the certifications found in Section II.C of the Application (*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 of the Application, Certifications, should be marked 'yes'.*);
- Completed and signed the Statement found in Section II.D of the Application;
- Completed Section III of the Application;
- Completed Section IV of the Application;
- Met Part C's public participation requirements as described in this memorandum and provided evidence that the State has done so; 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 2009 grants under Part C contact your Part C State Contact, Regional Resource Center and/or the National Early Childhood Technical Assistance Center.

### Attachments:

- Annual State Application Under Part C of the Individuals with Disabilities Education Act for Federal Fiscal Year 2008 (CFDA No. 84.181A)
- 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  
National Early Childhood Technical Assistance Center  
Technical Assistance Coordination Center