



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

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OSEP 08 - 01

MEMORANDUM

TO: State Lead Agency Directors
Part C Coordinators

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 C of the Individuals with Disabilities Education Act (IDEA)

ACTION

REQUIRED: Submission of Part C Application Packet by Friday, May 7, 2008

The purpose of this memorandum and enclosed Application is to 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 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 C 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 7, 2008.

Upon receipt and approval of the certifications and other information required by the Application,

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

the State LA will be eligible to receive its FFY 2008 Part C funds.

I. Procedures Lead Agencies are to Follow in Order to Receive a Part C Grant Award for FFY 2008

For the FFY 2008 grant period for July 1, 2008 through June 30, 2009, the Department is asking Lead Agencies (LAs) 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 policies, procedures, methods, descriptions, and assurances, in Section II, the State can and/or cannot provide in Section II and attach any that are checked as new or revised for the policies, procedures, methods or descriptions that must be part of the State's Application;
- 4) Provide an appropriate submission statement(s) found in Section I;
- 5) Provide the certifications found in Section II;
- 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 2008 Part C allotment;
- 7) Complete Section IV regarding system of payments and indirect costs and attach a copy of any appropriate documents including a cost allocation plan or restricted indirect cost rate agreement or proposal; and
- 8) 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 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, as amended in 2004, each State, by accepting a grant under Part C of the IDEA, expressly agrees to a waiver of Eleventh Amendment immunity for violations of the IDEA.

II. Summary of Substantive Changes in Part C Application Requirements

A summary of the substantive statutory changes that affect State Application requirements to the IDEA, as amended in 2004, that are relevant to State implementation of Part C for July 1, 2008 through June 30, 2009 is found in the *Technical Assistance Checklist* at <http://www.ed.gov/fund/grant/apply/osep/2008apps.html>. The column titled 'Description of Changes' provides a summary of the substantive statutory changes that apply to the Part C eligibility requirements found in PL 108-446.

III. Description of Use of Funds Under Part C

Each State's Application must include a description of how a State proposes to use its FFY 2008 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.

Although the Secretary is not required to reserve 15 percent of the appropriated amount for FFY 2008, as described in 20 U.S.C. 1443(e), States may still offer early intervention services to families, after the child turns three, consistent with 20 U.S.C. 1435(c).

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 C, 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 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. 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 hearing provided at least 30 days prior) 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.)

VI. Conditional Approval of FFY 2007 Application

As noted above, any State that received a grant award letter conditionally approving its FFY 2007 Application must provide OSEP with appropriate documentation to demonstrate that the conditions and other criteria outlined in the FFY 2007 grant award letter have been met. If a State's conditional approval was solely based on the State not providing all of the assurances in Section II of the Application, the State may simply update Section II of the Application.

However, if a State had conditional approval issues from previous Applications, it may need to submit specific documentation to address the conditions. In such cases, it is preferable that documentation to address the FFY 2007 conditional approval be sent to OSEP prior to the FFY 2008 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted with the FFY 2008 Application submission unless a different date is specified in the State's FFY 2007 grant letter. If the documentation includes any revisions in the State's policies and procedures, 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.

VII. 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) which may include use of public and/or private insurance or family fees, such as a sliding scale. 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.

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 complete the requested information on indirect costs in Appendix A, Part II of the Application and provide copies of appropriate documentation.

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 May 7, 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.capp@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 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 7, 2008, as the submission date for all documents necessary to demonstrate eligibility for FFY 2007 grant awards under Part C of the IDEA. As explained below, pre-award costs will only be provided consistent with the provisions of the CMIA and EDGAR at 34 CFR §76.703 (a copy of which is attached to the memorandum). Therefore, the effective date of a grant to a State that does not submit a substantially approvable Part C Application to OSEP by May 7, 2008, may be later than July 1, 2008.

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, 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 7, 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 7, 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 C Applications for FFY 2008, 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 or assurances requested by OSEP.

X. Conclusion

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

- 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 2007 grant award have been met;
- Indicated which policies, procedures, methods, descriptions, and assurances, in Section

- II. A-B, the State can and/or cannot make and provided documentation as appropriate;
- Provided certifications found in Section II. C (*Note: States submitted ED Form 80-0013, Certification Regarding Lobbying, with the State's FFY 2006 Part C Application. Therefore the first certification found in Section II. B, Certifications, should be marked 'yes'.*);
- Completed and signed the Statement found in Section II. D;
- Completed, as instructed, the Use of Funds information in Section III;
- Completed Section IV as appropriate and provided appropriate documentation; and
- Met Part C's public participation requirements as described in this memorandum;

Should you need assistance in implementing the requirements of IDEA, as amended in 2004, and/or meeting the Application requirements for FFY 2008 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: National Early Childhood Technical Assistance Center
Regional Resource Centers
Federal Resource Center