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

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MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Melody Musgrove, Ed.D.
Director
Office of Special Education Programs (OSEP)

SUBJECT: Procedures for Receiving a Federal Fiscal Year (FFY) 2012 Grant Award Under Part B of the Individuals with Disabilities Education Act (IDEA)

ACTION REQUIRED: Submission of Part B Application Packet by May 10, 2012

The purpose of this memorandum and enclosed Application is to inform State educational agencies (SEAs) of the procedures they must follow to receive a grant award under Part B of the IDEA, for FFY 2012 including funds that OSEP anticipates will become available to States on July 1, 2012 and October 1, 2012.[1]

The enclosed packet contains instructions and forms needed for completion of a FFY 2012 Part B State Application. The Application is also available on the Internet at http://www.ed.gov/fund/grant/apply/osep/2012apps.html. The completed Application, with supporting information, must be submitted on or before May 10, 2012 to ensure that FFY 2012 grant funds are available for obligation by your State on July 1, 2012.

States are required to ensure that their State policies, including statutes and regulations, are consistent with the Part B regulations at 34 CFR Part 300. Where States are revising State policies to be consistent with the Part B regulations, States should pay particular attention to the public participation requirements outlined in Section 4 of this memorandum. We expect States to make every effort to revise State policies consistent with their assurances provided in the FFY

[1] As of the date of this memorandum, the Department has received only short term funding for FFY 2012 through a Continuing Resolution. However, we do not anticipate a change in the basic funding structure of this program.

2011 Application for funds and the Part B regulations. If a State is unable to make any required changes, it should explain the circumstances and provide the timeline for completing the needed revisions.

1. Procedures States Are to Follow in Order to Receive a Part B Grant Award for FFY 2012

For the FFY 2012 grant period, the Department is asking each SEA 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/2012apps.html. (This document is provided to assist you in your review of State policies and procedures as you determine which Assurances you can and cannot make in Section II.A of the Application, and to provide easy reference to legal requirements relevant to Sections II.B and C and III of the Application.);
3) Determine which assurances, in Sections II.A and II.B of the Application, the State can and/or cannot make;
4) Provide the certifications found in Section II.C of the Application, and complete the certification statement in Section II.D;
5) Complete the Description of Use of Funds "Excel Interactive Spreadsheet" as instructed in Section III of the Application and describe the process your State used to get input from local educational agencies (LEAs) regarding the distribution of funds;
6) Comply with the State administration requirements described in Section IV of the application;
7) Provide an appropriate submission statement(s) found in Section I of the Application; and
8) Comply with the public participation requirements described in Section 4 of this memorandum.

States should carefully consider who has the authority to provide the assurances and certifications in light of 34 CFR Part 300 and the State's laws and regulations. Even if a State cannot provide all of the assurances found in Section II.A of the Application, with receipt of a grant the SEA still is responsible for complying with the requirements of Part B and ensuring that all public educational programs for children with disabilities in the State meet the education standards of the State educational agency, and for complying with the requirements of Part B (see 20 U.S.C. 1412(a)(11)) and 34 CFR §300.149.

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 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 of GEPA is attached to this memorandum. If OSEP has previously approved a State's description under section 427 of

GEPA and the State has not revised that description, it need not submit the description again.

3. Description of Use of Funds Under Part B[2]

20 U.S.C. 1411(e)(5) (see also 34 CFR §300.171) requires that, in order to receive a Part B grant, States must annually submit to OSEP a description of:

(A) how amounts retained under section 20 U.S.C. 1411(e) for State administration and State-level activities will be used to meet the requirements of Part B;

(B) how those amounts will be allocated among the State-level activities described in 20 U.S.C. 1411(e)(1) and (2) to meet State priorities based on input from LEAs; and

(C) dollar amounts, if any, that will be distributed to LEAs by formula.

States must use the "Excel Interactive Spreadsheet" to report this information. In completing the spreadsheet, 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 of IDEA for FFY 2012 that will be used for that activity. The Department will provide States with an estimate 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).

In completing the "Excel Interactive Spreadsheet," 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.

In addition, in Section III of the Application, States must describe the process used to get input from LEAs regarding distribution of amounts described in the spreadsheet.

4. 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 §300.165 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.

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. The Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.102 make clear that the Part B Applications are considered State plans.

34 CFR §300.165 requires that States conduct public hearings, ensure adequate notice of those hearings and provide an opportunity for public comment, including comment from individuals with disabilities and parents of children with disabilities, before adopting policies and procedures needed to comply with Part B (including any amendments to those policies and procedures).

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[2] Section III of the Application does not apply to the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. 34 CFR §300.171(c).

Therefore, prior to submitting your Part B Application for FFY 2012 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 on the new or revised policies and procedures, provide adequate notice of the hearings, and afford an opportunity for comments from the general public, including individuals with disabilities and parents of children with disabilities. The State must review and consider all public comments and make any necessary modifications to the Application or policies and procedures, as appropriate. The Annual State Application under Part B for Fiscal Year 2012 does not include a section that addresses the public participation requirements. However, your State must provide OSEP with information, such as copies of notices, showing that the State has complied with the public participation requirements contained in 34 CFR §300.165 and §441(b)(7) of GEPA (20 U.S.C. 1232d(b)(7)(B)). States should provide this information with their Annual State Application under Part B.

5. Conditional Approval of FFY 2011 Application

A number of States received 'conditional approval' of their FFY 2011 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 should complete Section I.B.1 of the Application, and update Section II of the Application to reflect changes it has made.

States that received conditional approval of their FFY 2011 applications 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 pre-FFY 2011 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 Section II.A of the Application assurances be sent to OSEP prior to the FFY 2012 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted no later than the FFY 2012 Application submission timeline of May 10, 2012, or, if a different date is specified in the State's FFY 2011 grant letter, that timeline. If the documentation includes any revisions to the State's policies and procedures needed to comply with Part B, including changes to State laws and regulations, States are reminded that they must comply with the public participation requirements in 34 CFR §300.165 in making those changes. (See Section 4 of this memorandum.)

6. State Administration

When addressing Section IV of the Application, State Administration, each State must indicate on the Application itself whether it has attached a list identifying any rules, regulations, or policies that are State-imposed (not required by IDEA or Federal regulations), or whether the State has no State-imposed rules. Please do not state "not applicable" or "n/a." Rather, if your State does not have any such rules, regulations or policies, please include a statement to that effect (e.g., "[State] does not have any rules, regulations or policies relating to special education that are not required by the IDEA or Federal regulations."). If your State has previously supplied OSEP with a list of rules, regulations, or policies that are State-imposed (not required by IDEA

or Federal regulations), please do not refer to a prior year's submission. Rather, the State must include a list in its Application, even if the list is identical to a prior year's list. This will enable the public to review the list without having to reference an earlier application. In addition, the State is required to inform LEAs in writing of such State-imposed rules, regulations or policies. 20 U.S.C. 1407(a) and 34 CFR §300.199.

7. Year of Age Cohorts for Which FAPE is Ensured

When there is an increase in funding available for States under the IDEA Part B section 611 program, as there may be in FFY 2012, the formula for distributing funds first allocates base amounts to States that are equal to the amounts they received from FFY 1999 funds. Then 85 percent of any remaining funds are allocated among the States on the basis of their relative populations of children aged 3 through 21, *who are of the same age as children with disabilities for whom the State ensures the availability of a free appropriate public education (FAPE),* and 15 percent of the remaining funds are allocated on the basis of the relative populations of those children who are living in poverty. (See 20 U.S.C. 1411(d)(3)(A); see also 34 CFR §300.703(c).)

At this point, all States are providing FAPE to all children with disabilities aged 3 through 17. State practice varies for children aged 18 through 21. For example, some States ensure FAPE for all children with disabilities through age 21 (and in some cases, even beyond that age, though the formula does not cover children beyond age 21). Some States ensure FAPE for all children who have not reached 21 by a date certain, such as September 1, and continue to ensure FAPE for children who turn 21 after that date for the remainder of the school year. Other States ensure FAPE for all children with disabilities through age 18, but allow LEAs to serve children with disabilities beyond that age.

In order to calculate State grants under section 611 of Part B for FFY 2012, if there is an increase in funding, we need to determine the age cohort for which each State will ensure the availability of FAPE for school year 2012-2013. Our rule for establishing the age cohort is quite simple – a State must ensure that FAPE is available for all children with disabilities, who are a particular number of years old, in order for that age year to be included in the State's relative population-age cohort. For example, if a State ensures FAPE to children through the end of a school term or school year in which the child turns 21, the State is ensuring the availability of FAPE to all children with disabilities through age 20 years old, but is not ensuring the availability of FAPE to all who are 21 years old. Therefore, the last age year to be included in its relative population-age cohort would be 20.

The attached chart "Year of Age Cohort for Which FAPE is Ensured (7-2011)" identifies, in the second column, the year of age cohorts for which each State ensures the availability of FAPE, based on the most recent information we have from that State. The third column provides a description, taken from State documents, of how each State determines the upper age for which it ensures FAPE.

Carefully review this information and if there are any errors or changes, notify OSEP with your grant application. If we do not hear from your State by May 10, 2012, we will assume you agree with our determination.

8. Submission of Application Packet/Due Date

States must submit an original signed and dated copy of the Application to demonstrate

eligibility, which must be received by OSEP on or before May 10, 2012 to:

U.S. Department of Education
Potomac Center Plaza
Mailstop 2600, Room 4129
550 12th Street, SW
Washington, DC 20202

For your convenience, in addition to your official submission, 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/2012apps.html. If you wish to submit a copy of your Application and any supporting documents by e-mail, please send it to OSERS.bapp@ed.gov.

Electronic submission by e-mail may facilitate 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** prior to making a grant. Regardless of whether a State sends an electronic 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 you are 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 9 of this memorandum, the submission date may affect the date on which OSEP determines 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 hard copy with an original signature as described in this section no later than May 10, 2012.

9. 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 requirements of the Cash Management Improvement Act, 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 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 10, 2012, as the submission date for all documents necessary to demonstrate eligibility for FFY 2012 grant awards under 20 U.S.C. 1411 and 1419 of IDEA. As provided for in 34 CFR §76.703(c)(1), the submission date is the date that OSEP receives all documents necessary to demonstrate eligibility.

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 a substantially approvable Application to OSEP by May 10, 2012, may be later than July 1, 2012.

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, 2012, 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, 2012).

If a State has submitted a substantially approvable Application by the May 10, 2012 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2012. If the Department receives a State's substantially approvable Application after the May 10, 2012 deadline, but before July 1, 2012, the starting date for obligating funds will be July 1, 2012, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2012. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2012, the starting date for obligating funds 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, 2012, or the Application that the State submits is not substantially approvable and the State subsequently submits a substantially approvable application, 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 2012, an Application is "substantially approvable" when the Department is satisfied that it meets the requirements in this Application package. An Application will not be "substantially approvable" until OSEP receives any clarifications, amendments or assurances requested by OSEP.

10. Conclusion

As explained in this memorandum, it is important that, before submitting its Application for FFY 2012, 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 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, including the Description of the Use of Funds in the "Excel Interactive Spreadsheet" and description of the process used to get input from the LEAs;
- Completed Section IV of the Application;
- Reviewed the Year of Age Cohorts for Which FAPE is Ensured chart and notified OSEP of any errors or changes.

- Met Part B'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 2012 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 2012 (CFDA Nos. 84.027A and 84.173A)
- Notice to All Applicants Regarding GEPA section 427
- Year of Age Cohorts for Which FAPE is Ensured
- 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