



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

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OSEP 12-03

**MEMORANDUM**

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

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

**SUBJECT:** Procedures for Receiving a Federal Fiscal Year (FFY) 2012 Grant Award Under Part C of the Individuals with Disabilities Education Act (IDEA), and the new final IDEA Part C Regulations Published on September 28, 2011.

**ACTION REQUIRED:** Submission of Part C Application Packet by April 16, 2012

The purpose of this memorandum and enclosed Application is to inform State lead agencies of the procedures they must follow to receive a grant award under Part C of the IDEA for FFY 2012 funds that OSEP anticipates will become available to States on July 1, 2012.<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/2012apps.html>. The completed Application, with supporting information, must be submitted on or before April 16, 2012, to ensure that your State's FFY 2012 IDEA Part C grant funds are available for obligation on July 1, 2012.

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.*, and the final IDEA Part C regulations in 34 CFR Part 303, which regulations were published on September 28, 2011. Since your State will need to adopt new or revised policies to meet these Part C requirements for the

<sup>1</sup> 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 to the basic funding structure of this program for FFY 2012.

FFY 2012 Application, please review carefully the public participation requirements in Section 4 of this memorandum to ensure compliance with those requirements. Upon receipt and approval of the certifications and all other information required by the FFY 2012 Part C Application, the State lead agency will be eligible to receive its FFY 2012 Part C funds.

### **1. Procedures States Must Follow to Receive a Part C Grant Award for FFY 2012**

For the FFY 2012 grant period, the Department is asking each lead agency to:

- 1) Read the Instruction Sheet;
- 2) Carefully review the eligibility requirements found in the *IDEA Part C Grant Application Technical Assistance Checklist* at <http://www.ed.gov/fund/grant/apply/osep/2012apps.html>. (This Checklist is provided to assist you in your review of State policies and procedures as you determine how the State will meet the requirements in Sections II.A and B of the Application, and to provide references to applicable regulatory requirements relevant to Sections II.A and B of the Application.);
- 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 the certifications found in Section II.C of the application, and complete the certification statement in Section II.D (Please review OSEP's IDEA Part C Grant Application Technical Assistance Checklist for the Fiscal Certification Required Under 34 CFR §303.202);
- 5) 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 2012 Part C allotment;
- 6) 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;
- 7) Provide appropriate submission statement(s) found in Section I; and
- 8) Comply with 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 Part C program made by the final IDEA Part C regulations in 34 CFR Part 303, which regulations were published on September 28, 2011, and the State's laws and regulations. Even if the State cannot 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 IDEA 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 waive 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 GEPA section 427 is attached to this memorandum. If OSEP has previously approved a State's description under GEPA 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 2012 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. For the Lead Agencies that are State Education Agencies (SEAs), the SEA is not required to provide the detailed information regarding the use of IDEA Part C funds for the State administration in Section III.A, but must provide the total amount to be used for such purposes under Section III. A.

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

Before submitting its FFY 2012 Part C application to the Secretary, the State must publish its Part C application, consistent with GEPA and the IDEA Part C regulations, in a manner that will ensure circulation throughout the State at least 60 days prior to the date on which the State application is submitted to the Secretary or on which the application becomes effective, whichever occurs earlier, with an opportunity for public comment on the application for at least 30 days during that 60-day publication period. Your State must provide OSEP with information, such as copies of notices, showing that the State has complied with this public participation requirement. States should provide this information with their Annual State Application under IDEA Part C.

In addition, before a State adopts a new or revised policy that is not contained in, but required to be part of, Section II.A of the IDEA Part C FFY 2012 application, the State must comply with the public participation requirements in the prior regulations in 34 CFR §§303.110 through 303.113. Specifically, the State lead agency must: (1) publish its IDEA Part C new or revised policy in a manner that will ensure circulation throughout the State at least 60 days prior to the date on which the policy is submitted to the Secretary or on which the policy becomes effective, or the policy is adopted, whichever occurs earlier, with an opportunity for public comments on the policy for at least 30 days during that 60-day publication period; 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 prior 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 prior 34 CFR §303.113(b), each State must submit to OSEP with its new or revised policy that is not contained in, but required to be part of, Section II.A of the application, copies of news releases, advertisements, and announcements used to provide notice to the general public of the hearings held on the new or revised policy.

Please note that the public participation requirements in new 34 CFR §303.208 are effective on July 1, 2012 or earlier, if the State elects to adopt them earlier. These new requirements do not apply to the FFY 2012 IDEA Part C Grant Application. They will apply to the adoption, after July 1, 2012, of new or revised policies and procedures needed to comply with the IDEA Part C statute and regulations and to the FFY 2013 IDEA Part C Grant Application.

### **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.B of the Application or provide the policies, procedures, methods or descriptions required in Section II.A of the Application. If a State’s conditional approval was based on the State not being able to check ‘yes’ for all of the items in Section II.A or B of the Application, the State must complete Section I.B.1 of the Application, and update Section II.A and B 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 a specific assurance submitted by the State, as part of the State’s FFY 2011 grant application, based on changes to State policies and procedures specifically required by OSEP) 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 such other issues 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, or, if a different date is specified in the State’s FFY 2011 grant letter, that timeline. If the documentation includes any revisions in the State’s policies and procedures that are part of Section II.A of the application and which are 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 written policy that applies a system of payments for Part C services under 20 U.S.C. 1432(4)(B) and new 34 CFR §§303.520 and 303.521. 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. The new IDEA Part C regulations specify in new 34 CFR §§303.520 and 303.521 that a State must adopt a written system of payments policy if the State uses public insurance or benefits, private

insurance, or family fees, such as a sliding scale, to pay for Part C services. If the State is required to revise its procedures to comply with the requirements in new 34 CFR §§303.520 and 303.521 or has elected to adopt new or revised policies and procedures regarding its system of payments, it must submit these policies and procedures under Section II.A.3.a 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 check the appropriate box in Section IV.B of the Application. In addition, these lead agencies must submit, with the State's Part C application, updated copies of appropriate documentation such as a restricted indirect cost rate (RICR) agreement, RICR proposal, or cost allocation plan (CAP), and a copy of correspondence from the lead agency's cognizant Federal agency confirming receipt of the RICR proposal or CAP or approval of the RICR agreement or CAP. The lead agency must ensure that any restricted indirect costs charged to IDEA Part C grant funds comply with the requirements in new 34 CFR §303.225(c). OSEP Memorandum 99-2 regarding Restricted Indirect Cost Rate for Part C of the IDEA may be referenced at the following location <http://www.ed.gov/fund/grant/apply/osep/2012apps.html> on the Internet.

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

To be eligible to receive IDEA Part C funds on July 1, 2012, States must submit an original signed and dated copy of the Application and any other documents necessary to demonstrate eligibility, which must be received by OSEP on or before April 16, 2012, 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, S.W.  
Washington, D.C. 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/2012apps.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 by e-mail, 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** prior to making a grant. Regardless of whether a State e-mails its Application and any supporting documents, it must still mail in the original signed hard copy of the Application; the submission date of a State's Application is the date that OSEP receives the hard copy Application with an original signature.

If corrections are needed to the Assurances or other information in Section II 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, including any revised documents necessary to demonstrate eligibility in the format described in this Section, no later than April 16, 2012.

## **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 (CMIA), 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 April 16, 2012, as the submission date for all documents necessary to demonstrate eligibility for FFY 2012 grant awards under 20 U.S.C. 1444 of IDEA and the IDEA Part C regulations. 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, CMIA 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 April 16, 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 April 16, 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 April 16, 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 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, 2012, 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 2012, 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, assurances, or other information requested by OSEP.

## 9. 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, policies, procedures, methods or descriptions in Section II.A of the Application, the State can or cannot make/provide;
- Provided the assurances in Section II.B of the Application;
- Provided the certifications found in Section II.C of the Application  
Please review OSEP's IDEA Part C Grant Application Technical Assistance Checklist for the Fiscal Certification Required Under 34 CFR §303.202.  
*(Note: States submitted ED Form 80-0013, Certification Regarding Lobbying, with the State's FFY 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 regarding the State's Use of Funds;
- Completed Section IV of the Application regarding the State's system of payments and indirect costs and attach a copy of all appropriate indirect costs documents, including a cost allocation plan, or restricted indirect cost rate agreement or proposal;
- Met Part C's public participation requirements as described in this memorandum and submitted to OSEP evidence that the State has done so (including copies of notices, announcements, etc.); 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 IDEA 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 2012 (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