



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

NOV 16 2012

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OSEP 13-05

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) 2013 Grant Award Under Part C of the Individuals with Disabilities Education Act (IDEA), and the Final IDEA Part C Regulations Published on September 28, 2011.

ACTION REQUIRED: Submission of Part C Application Packet by April 22, 2013

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 2013 funds that OSEP anticipates will become available to States on July 1, 2013.¹

The enclosed packet contains instructions and forms needed for completion of the IDEA Part C State Application. The Application is also available on the Internet at <http://www.ed.gov/fund/grant/apply/osep/2013apps.html>. The completed Application, with supporting information, must be submitted on or before April 22, 2013, to ensure that your State's FFY 2013 IDEA Part C grant funds are available for obligation on July 1, 2013.

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 likely need to adopt new or revised policies to meet these Part C requirements for

¹ As of the date of this memorandum, the Department has received only short-term funding for FFY 2013 through a Continuing Resolution. However, we do not anticipate a change to the basic funding structure of the IDEA Part C program for FFY 2013.

the FFY 2013 IDEA Part C 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 2013 IDEA Part C Application, the State lead agency will be eligible to receive its FFY 2013 IDEA Part C funds.

1. Procedures States Must Follow to Receive an IDEA Part C Grant Award for FFY 2013

For the FFY 2013 grant period, the Department is asking each State lead agency to:

- 1) Read the Instruction Sheet;
- 2) Carefully review the eligibility requirements found in the *IDEA Part C Grant Application Technical Assistance Checklists* found at <http://www.ed.gov/fund/grant/apply/osep/2013apps.html>.

(These four Checklists will assist you in your review of State policies and procedures, methods, description, and assurances as you determine how the State will meet the requirements in Sections II.A and B of the Application, and the checklists also provide references to applicable regulatory requirements relevant to Sections II.A and II.B of the Application.) The four checklists are OSEP's annotated checklists for reviewing: (1) Section II.A of the IDEA Part C Grant Application; (2) System of Payments Policies under Section II.A.3.a of the IDEA Part C Grant Application; (3) Methods under Section II.A.3.b of the IDEA Part C Grant Application; and (4) Transition Documents under Section II.A.10 of the IDEA Part C Grant 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 (For Certification 3 under Section II.C, please review OSEP's IDEA Part C Grant Application Technical Assistance Checklist for the Fiscal Certification Required Under 34 CFR §303.202—this Fiscal Certification relates to having in place methods and contracts that meet the applicable requirements);
- 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 2013 IDEA Part C allotment. (Please be sure to indicate "N" for "new" under Section II.A.6, as every State submits a new Section III each year);
- 6) Complete Section IV.A regarding system of payments and Section IV.B regarding indirect costs and attach a copy of all appropriate indirect cost documents, including a cost allocation plan, restricted indirect cost rate agreement or proposal, or other relevant 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 for implementing the requirements of IDEA Part C (see 20 U.S.C. 1435 and 34 CFR Part 303).

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 2013 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

Application Requirement: Before submitting its FFY 2013 IDEA Part C application to the Secretary, the State must publish its Part C application (including any policies, procedures, descriptions, methods, certifications, assurances, and other information required in the application) 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 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 60-day public participation requirement. States must submit this information with their Annual State Application under IDEA Part C.

Policies/Procedures Requirement: In addition, before a State adopts a new or revised policy needed to comply with IDEA Part C statute and regulations, the State must subject the policy to the public participation requirements in 34 CFR §303.208(b). Please note that the public participation requirement applies to all new or revised policies and not just those required to be submitted under Section II.A of the IDEA Part C application (as was the case under the prior regulations in 34 CFR §303.110). Specifically, the State lead agency must: (1) provide an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, early intervention service providers, and members of the State Interagency Coordinating Council, to comment on the new or revised policy for at least 30 days; and (2) hold public hearings on the new or revised policy (with a 30-day notice of the hearings to enable public participation).

Finally, please note that under 34 CFR §303.101(c), the State must also obtain approval by the Secretary before implementing the following policies that are required to be submitted as part of Section II.A of the State's IDEA Part C application in 34 CFR §§303.203(a) (Definition of early intervention services), 303.203(b) (System of Payments Policy, and Methods), 303.203(c) (Definition of developmental delay/Evaluation & assessment procedures), 303.204 (At-risk definition and services), 303.206 (Referral of specific children including CAPTA), 303.207 (Geographic equity), 303.208 (Public participation), 303.209 (Transition), and 303.211 (Part C extension option beyond age three).

5. Conditional Approval of FFY 2012 Application

Most States received "conditional approval" of their FFY 2012 Applications. In almost all 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 2012 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 2013 Application submission, to ensure timely processing of the Application. However, the documentation must be submitted no later than when the State submits its FFY 2013 Application, or earlier, if a different and earlier date is specified in the State's FFY 2012 grant letter. States are reminded that they must comply with applicable public participation requirements identified in Section 4 of this memorandum prior to adopting new or revised policies.

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 is required to have a written policy that applies a system of payments for IDEA Part C services under 20 U.S.C. 1432(4)(B) and 34 CFR §§303.520 and 303.521. The IDEA Part C regulations specify in 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 uses one of these funding sources, it does have a system of payments for IDEA Part C services and must check "Yes" under Section IV.A. The State must also submit its system of payments 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/2013apps.html> on the Internet.

7. Submission of Application Packet/Due Date

To be eligible to receive IDEA Part C funds on July 1, 2013, 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 22, 2013, to:

United States Department of Education
Office of Special Education Programs
Potomac Center Plaza
Mail Stop 2600, Room 4166
550 12th 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/2013apps.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.

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 22, 2013.

8. Effective Date of Grant

The provisions of EDGAR, in 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 22, 2013, as the submission date for all documents necessary to demonstrate eligibility for FFY 2013 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 22, 2013, may be later than July 1, 2013.

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, 2013 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, 2013).

If a State has submitted a substantially approvable Application by the April 22, 2013 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2013. If the Department receives a State's substantially approvable Application after the April 22, 2013 deadline, but before July 1, 2013, the starting date for obligating funds will be July 1,

2013, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2013. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2013, 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, 2013, 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 2013, 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 2013, 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. Please review carefully OSEP's four annotated checklists for reviewing: (1) Section II.A of the IDEA Part C Grant Application; (2) System of Payments Policies under Section II.A.3.a of the IDEA Part C Grant Application; (3) Methods under Section II.A.3.b of the IDEA Part C Grant Application; and (4) Transition Documents under Section II.A.10 of the IDEA Part C Grant Application (These checklists are located at <http://www2.ed.gov/fund/grant/apply/osep/2013apps.html>);
- Provided the assurances in Section II.B of the Application;
- Provided the certifications found in Section II.C of the Application. For the third certification found in Section II.C, 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 IDEA Part C's public participation requirements for both the application and for any new or revised policies as described in this memorandum and submitted to OSEP evidence that the State has met the application public participation requirement (by providing copies of notices or 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 2013 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 2013 (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