



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

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TO : State Directors of Special Education

FROM : Judith E. Heumann *Judith Heumann*
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Office of Special Education and Rehabilitative Services

Kenneth R. Warlick *Kenneth Warlick*
Director
Office of Special Education Programs

DATE : June 13, 2000

SUBJECT : Review of Eligibility Documents and
Issuance of Grant Awards for FFY 2000

The purpose of this memo is to make you aware of our efforts to ensure that eligibility documents are carefully reviewed and grant awards for FFY 2000 are issued in a timely manner. As you know, significant amendments to the Individuals with Disabilities Education Act (IDEA) came into effect on June 4, 1997. For States to receive Part B funds in FFY 1997, the Office of Special Education Programs (OSEP) required them to submit a signed assurance that the State would operate in a manner consistent with the revised provisions of the IDEA. Regulations were published on March of 1999, therefore, OSEP allowed States to receive Part B funds based on assurances for FFY 1998 and FFY 1999. OSEP Memo 99-13, dated June 19, 1999, informed States that in order to receive funds for FFY 2000, they must "ensure that the State has on file with the Secretary policies and procedures, including relevant statutes, regulations, or other documents that demonstrate that the State meets all of the eligibility requirements of section 612(a) of the IDEA." OSEP established April 14, 2000 as the submission date for all documents necessary to demonstrate eligibility. In addition, OSEP Memo 00-4, issued in November of 1999, provided States with detailed clarification regarding public participation requirements and documents that must be submitted to establish eligibility. Further, State contacts called their States in December of 1999 to discuss the submission requirements and determine the status of States' preparation of eligibility documents.

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As of the close of business on April 14th, we had received submissions from only about half of the jurisdictions. As of Friday, June 9th, we have received eligibility document submissions from 46 of 57 States and entities. In addition to State delays in submitting documentation, our initial, cursory reviews of States' submissions revealed several basic problems with States' submissions. A number of States did not complete required public participation. Some States did not make documents available for 60 days for public comment, while others made only regulations available for public comment and not other eligibility documents such as interagency agreements, comprehensive system of personnel development policies and procedures, etc. In addition, numerous States have submitted statutes and regulations that are draft. Even at this point in time, a number of States have not yet submitted any or complete eligibility documents for review.

In addition to the above issues, because of the complexity of the reviews of State documents, and the fact that many States have submitted exceedingly voluminous and poorly organized documents, many of the reviews are taking far more staff time than anticipated. At this point, we believe that we will identify substantive issues that will need to be resolved in virtually every jurisdiction. We are concerned that the significance of the problems we are identifying in eligibility documents may be characteristic of problems in service delivery to children with disabilities.

We are taking this eligibility documentation review quite seriously and we will not allow pressures to make quick funding decisions to undermine that review. We owe it to children with disabilities and their parents, as well as to your State education agency, to do a thorough and comprehensive review. However, if we were to follow past practice this year by requiring corrective action in advance of awards, many States would experience funding delays of such length that there could be the real possibility of interruptions or delays in services affecting children with disabilities. In our deliberations, our goal has been to find a way to avoid widespread delays in funding States that made a credible, though frequently flawed, attempt to meet the terms of OSEP Memos 99-13 and 00-4, while not backing away from our obligation to ensure, through our review of the eligibility documentation, that State laws, policies, and procedures comply with the IDEA.

Accordingly, we have determined that we will take the following approach:

- States that have submitted a complete eligibility documentation package will be provided the option of receiving a grant based on giving OSEP an assurance that as soon as possible within the grant year, all of the needed changes to bring the eligibility documents into compliance will be completed. The State must also assure that it has the authority to require, and will take steps to ensure, that throughout the period of the grant award, all public agencies will operate their programs in a manner fully consistent with Part B. Essentially, we are asking States whose submissions demonstrate a good faith effort to provide the necessary documentation to commit to a process that will result in the resolution of all of the issues we have identified, or will identify, in our review.

- States that have not submitted a complete eligibility documentation package will be offered the same opportunity once we have received a complete eligibility documentation package from them.

Staff in the Monitoring and State Improvement Planning (MSIP) Division will continue to place priority on reviewing each State's submission and issuing a chart of issues that need to be resolved to each State that has submitted eligibility documents, giving priority in order of review, according to the date documents were received at OSEP. We are committed to completing thorough reviews of all State submissions, and notifying States of any issues found, as quickly as is possible. However, awards will not be delayed until this review is completed provided that the State's submission is complete and the State provides the assurance described above. In preparation for issuance of grant awards, OSEP will also consider if special conditions are warranted for a State due to longstanding, systemic noncompliance.

MSIP staff will work with your State to assist you in expeditiously resolving any issues we identify in your eligibility documents. In order to effectively demonstrate eligibility for funds in FFY 2001, States must have completely addressed the issues in the issues chart by March 2, 2001, the projected due date for submission of eligibility documents for FFY 2001 funds.

States with public participation problems must complete the required public participation activities as quickly as possible and will be notified by separate letter. If you have any questions about this process, please feel free to contact Ruth Ryder at 202-205-5547 or Lawrence Wexler at 202-205-5390.