



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

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February 24, 2023

OSEP 23-02

MEMORANDUM

TO: Chief State School Officers
State Directors of Special Education

FROM: Valerie C. Williams *Valerie C. Williams*
Director
Office of Special Education Programs (OSEP)

SUBJECT: Procedures for Receiving a Federal Fiscal Year (FFY) 2023 Grant Award
Under Part B of the Individuals with Disabilities Education Act (IDEA)

**ACTION
REQUIRED:** Submission of Part B Application Packet by May 24, 2023

The purpose of this memorandum 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 2023 funds that will become available to States on July 1, 2023 and October 1, 2023. There are three new areas that all States must review for the FFY 2023 IDEA Part B Application:

- (1) Non-Substantive Change to Section II.C. of the Application (see Section 2 below);
- (2) New Required Form under General Education Provisions Act (GEPA) section 427 (see Section 3 below); and
- (3) New requirement under the Build America Buy America Act (BABAA) (see Section 4 below).

The enclosed packet contains instructions and forms needed for completion of your FFY 2023 Part B State Application. The Application will also be available on the Internet at <https://sites.ed.gov/idea/grantees/#Grants>. The completed Application, with supporting information, must be submitted on or before May 24, 2023 to ensure that your State's FFY 2023 grant funds are available for obligation on July 1, 2023.

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States are required to ensure that their State policies and procedures, including statutes and regulations, are consistent with the IDEA Part B requirements in 20 U.S.C. 1411-1419, and the IDEA Part B regulations in 34 CFR Part 300. Where States are revising State policies and procedures to be consistent with Part B of the IDEA and the Part B regulations, States need to pay particular attention to the public participation requirements outlined in Section 11 of this memorandum to ensure compliance with these requirements. We expect States to make every effort to revise State policies and procedures consistent with the assurances they provided in the FFY 2022 Application for Part B funds and Part B of the IDEA and the Part B regulations. If a State is unable to make any required changes it committed to make in its FFY 2022 Part B Application, it should explain the circumstances and provide the timeline for completing the needed revisions.

1. Procedures States Must Follow in Order to Receive a Part B Grant Award for FFY 2023

For the FFY 2023 grant period, the Department is asking each SEA to:

- 1) Read the Instruction Sheet;
- 2) Provide an appropriate submission statement(s) found in Section I of the Application;
- 3) Carefully review the eligibility requirements found in the *Technical Assistance Checklist* at <https://sites.ed.gov/idea/grantees/#Grants>. (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 Sections II.A and II.B. of the Application, and to provide easy reference to legal requirements relevant to Sections II, III, and IV of the Application);
- 4) Determine which assurances, in Sections II.A. and II.B. of the Application, the State can and/or cannot make;
- 5) Provide the certifications found in Section II.C of the Application and complete the certification statement in Section II.D of the Application;
- 6) 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;
- 7) Comply with the State administration requirements described in Section IV of the Application;
- 8) Comply with the public participation requirements described in Section 11 of this memorandum;
- 9) Complete the “Maintenance of State Financial Support” form as instructed in Section V.A. of the Application. Section V.A must be certified by the State Budget Officer or Authorized Representative; and
- 10) Complete the “Significant Disproportionality Reporting Form” if revisions were made to the State’s procedures for calculating Significant Disproportionality as instructed in Section 10 of this memorandum and Section V.B. of the Application.

Even if a State cannot provide all of the assurances found in Section II.A. of the Application, with receipt of its FFY 2023 IDEA Part B 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 educational standards of the SEA, including the requirements of 34 CFR Part 300. 20 U.S.C. 1412(a)(11) and 34 CFR § 300.149.

By accepting a grant under Part B of the IDEA, each State expressly agrees to waive Eleventh Amendment immunity for violations of the IDEA under 20 U.S.C. 1403.

2. Non-Substantive Change to Section II.C. of the FFY 2023 Application Template

The IDEA Part B application template has been updated to remove duplicative text that was referenced in two places, in Section II.C. (Certifications), previous-item number two, and in Section II.D. (Statement). Specifically, the text pertains to a provision, under the Education Department General Administrative Regulations (EDGAR) at 34 CFR § 76.104, relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law in place within the State. The non-substantive change removed the statement from under Section II.C., previous-item number two, in order to eliminate the duplication of the statement in Section II.D. of the Application. States are required to complete and submit the updated application template (OMB Control No. 1820-0030 1/31/2026) included with this package and use it for public participation purposes as well.

3. New Form Required by Section 427 of GEPA

New form for the FFY 2023 IDEA grant application – All States must submit a new form under GEPA section 427.

GEPA section 427 is a longstanding requirement. Each State has had on file with the Department a description as required by section 427 of GEPA. This description includes the steps and strategies 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.

For FFY 2023, the Department recently revised the GEPA section 427 form (OMB Control No. 1894-0005 2/28/2026).

- All States must submit this newly revised GEPA section 427 form (which is attached).
- The revised GEPA section 427 form replaces the description that each State has previously had on file.
- The revised GEPA section 427 form must be included as part of the State's FFY 2023 IDEA Part B Application that must go through the public participation requirements in 34 CFR § 300.165 as described in Section 11 below (60-day circulation/30-day comment).

- The revised GEPA section 427 form must be submitted with the FFY 2023 IDEA Part B Application (electronically by May 24, 2023, and hard copy by August 1, 2023).

OSEP notes that the requirement that the State’s GEPA section 427 form contain a description of steps that would promote equitable access and participation applies only to State-level uses of funds for activities other than program administration. Activities to be undertaken at the local level would be addressed in subgrantees’ applications to the State, and the State is responsible for reviewing those application for adherence to GEPA section 427.

Going forward for future IDEA Part B grant applications, the State must review (and, if necessary and appropriate, revise) its GEPA section 427 form given that the newly revised form is a four-part question that requires States to identify, among other information, appropriate timelines for addressing identified barriers.

4. Build America Buy America Act (BABAA)

On November 18, 2022, Gregg Corr sent an email to all State Directors of Special Education about correspondence sent to Chief State School Officers regarding BABAA (Pub. L. No. 117-58). Under BABAA, grantees may not use their Federal IDEA grant funds for infrastructure projects (e.g., construction, remodeling, and broadband infrastructure) or activities unless they comply with the following Buy America Sourcing requirements:

1. All iron and steel used in the infrastructure project or activity are produced in the United States.
2. All manufactured products used in the infrastructure project or activity are produced in the United States; and
3. All construction materials are manufactured in the United States.

This new grant condition applies to all IDEA Part B grant awards issued since October 1, 2022. It does not retroactively apply to IDEA Part B grant funds awarded prior to October 1, 2022. OSEP reissued Grant Award Notifications (GANs) for the October 1 disbursement of the FFY 2022 IDEA Part B section 611 grant funds to include the BABAA condition in Box 10 of the document. Additional information about this grant condition can be found in the attached document entitled “Build America Buy America Sourcing Requirements Grant Condition Required Domestic Sourcing Under the Build America Buy America Act (BABAA)” and at the Department’s Build America Buy America Waivers website at: <https://www2.ed.gov/policy/fund/guid/buy-america/index.html>.

5. Conditional Approval of FFY 2022 Application

Some States received ‘conditional approval’ of their FFY 2022 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 2022 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) 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 2023 Application submission, to ensure timely processing of the Application.

However, States must submit the documentation no later than the FFY 2023 Application submission timeline of May 24, 2023, or, if a different date is specified in the State’s FFY 2022 grant letter, by 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 11 of this memorandum.)

6. Impact of Changes made by the Marrakesh Treaty Implementation Act on Your State’s IDEA Part B Grant and Grant Application

Background

In October of 2018, the President signed the Marrakesh Treaty Implementation Act (MTIA). The MTIA amended section 121 of the Copyright Act, 17 U.S.C. 121. There were two changes to 17 U.S.C. 121 that impact the provisions regarding accessible instructional materials in IDEA section 612(a)(23), 20 U.S.C. 1412(a)(23) and 34 CFR § 300.172 of the IDEA Part B regulations, which are addressed in Assurances 23a and 23b in Section II of the Application.

In the *Further Consolidated Appropriations Act, 2020*, Congress amended the *1931 Act to Provide Books for the Adult Blind* (2 U.S.C. § 135a) to incorporate the definitions found in 17 U.S.C. 121. As a result of MTIA and changes made by the *Further Consolidated Appropriations Act, 2020*, the Department is identifying below the definitions of the two relevant terms used in the IDEA that have been replaced as a result of these statutory changes.

Changes to the Definition of ‘Blind Persons or Other Persons with Print Disabilities’

The IDEA defines the term “blind or other persons with print disabilities” in 20 U.S.C. 1412(a)(23)(E)(i). The IDEA Part B regulation at 34 CFR § 300.172(e)(1)(i) incorporates the IDEA statutory definition. The term “blind persons or other persons with print disabilities” has been removed from the Copyright Act and replaced with the term “eligible person.” “‘Eligible person’ means an individual who, regardless of any other disability— (A) is blind; (B) has a visual impairment or perceptual or reading disability that cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or (C) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or

move the eyes to the extent that would be normally acceptable for reading.” 17 U.S.C. 121(d)(3).

Changes to the Definition of ‘Specialized Formats’

The term “specialized formats” is defined in the IDEA at 20 U.S.C. 1412(a)(23)(E)(iii), and IDEA’s definition cross-references the Copyright Act. The IDEA Part B regulations at 34 CFR § 300.172(e)(1)(iv) also incorporate this IDEA statutory definition. As a result of changes made to the Copyright Act, 17 U.S.C. 121, the term “specialized formats” has also been removed and replaced with the term “accessible format”. “‘Accessible format’ means an alternative manner or form that gives an eligible person access to the work when the copy or phonorecord in the accessible format is used exclusively by the eligible person to permit him or her to have access as feasibly and comfortably as a person without such disability as described in paragraph (3).” 17 U.S.C. 121(d)(1).

Implications of These Changes for the IDEA Part B Grant and Grant Application

Until such time as Congress makes technical amendments to the IDEA statute and the Department is able to make conforming technical amendments to the IDEA Part B regulations, States should rely on, and utilize, the terms and definitions as updated and implemented by the Marrakesh Treaty and found in the Copyright Act at 17 U.S.C 121. Therefore, while the language in Assurances 23a and 23b has not been changed, the Department construes these assurances as incorporating the terms “eligible person” and “accessible format” as discussed above.

7. Description of Use of Funds Under Part B¹

Pursuant to 20 U.S.C. 1411(e)(5) and 34 CFR § 300.171, in order to receive an IDEA Part B grant, States must annually submit to OSEP a description of:

- (A) how amounts retained under 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” included with the FFY 2023 Part B Grant Application package 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 the IDEA for FFY 2023 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

¹ 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).

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.

Under 2 CFR § 200.308(f), after OSEP approves the initial Section III (Excel Interactive Spreadsheet) in the FFY 2023 grant award letter, the State must obtain the prior approval of OSEP, by submitting a revised Section III (the Excel Interactive Spreadsheet), if the State proposes to transfer among direct cost categories, programs, or activities a *cumulative* amount that exceeds 10% of the total amount of funds reserved under IDEA section 611(e) for State-level activities or *is expected* to exceed 10% of that total, provided that the Federal share in the grant exceeds the Simplified Acquisition Threshold (currently set at \$250,000).

In addition to the approvals needed for the revision of cost items within budget and program plans, as referenced above, under 20 U.S.C. 1404, 2 CFR Part 200, and 34 CFR § 300.718, States must also request prior approval from OSEP for certain other State-level activities or expenses.² These expenses include: (1) equipment (with a per unit cost of \$5,000 or more); (2) participant support costs (such as training or travel costs for non-employees); and (3) construction or renovation of facilities.

There are two guidance documents that may be helpful to review for prior approval requests. [OSEP’s Guidance for Common Prior Approval Requests under IDEA Parts B and C](#), issued on January 3, 2023, provides a summary of the guidance and approval process for three common prior approval cost categories (equipment, participant support costs, and revision of cost items within budget and program plans). In addition, States should continue to refer to the October 29, 2019, [Frequently Asked Questions \(FAQs\) Prior Approval – OSEP and RSA Formula Grants](#), which details prior approval flexibilities for equipment and participant support costs and describes the parameters under which OSEP has provided prior approval for a subset of these costs.

Importantly, for participant support costs that fall outside the prior approvals provided in Question 6 of the FAQ, States must complete a prior approval request and: (1) identify the total amount of participant support costs to be charged to the IDEA Part B grant; (2) provide a statement confirming that the participant support costs will improve the IDEA Part B program and are reasonable, necessary, and allocable to the IDEA Part B grant; and (3) provide a description that includes: the activity(ies) for which the cost(s) will be used, elements of the cost (i.e. travel, registration and individual participant costs), the specific timeframe of the activity(ies), and the role of participant(s) or trainee(s) related

² Each State must obtain prior approval from the Department under the IDEA and the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) for certain expenses, including: (1) equipment (tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000); (2) participant support costs (direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with conferences or training projects); and (3) construction/renovation of capital assets (see 2 CFR §§ 200.1 and 200.407). OMB recently revised 2 CFR Part 200 to include the definitions for “capital assets,” “equipment,” and “participant support costs” in 2 CFR § 200.1. See 85 FR 49506 (Aug. 13, 2020) (effective Nov. 12, 2020).

to the IDEA Part B program. States have the option of providing this information by using the “State Request for Prior Approval of Participant Support Costs” tool, developed by the National Center for Systemic Improvement, which can be found at <https://ncsi-library.wested.org/resources/230>.

8. 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(a).

9. Maintenance of State Financial Support

States must report data on the amount of State financial support for special education and related services for children with disabilities made available in State fiscal years (SFY) 2021 and 2022 in Section V.A. of the Application. OSEP notes that some States have had difficulty reporting valid and reliable data in Section V.A. As a result, OSEP encourages SEAs to work closely with State staff who have the expertise in State fiscal issues prior to submitting the Application. Additionally, SEAs can work with the Center for IDEA Fiscal Reporting (CIFR) to obtain technical assistance on Maintenance of State Financial Support (MFS) data and calculations. The CIFR contact information can be found at <http://cifr.wested.org/contact/>. OSEP also reminds States to carefully consider who has the authority to provide the assurances and certifications and the information required to be reported in Section V.A. of the Application in light of 34 CFR Part 300 and the State’s laws and regulations. The information should be certified by an individual who is knowledgeable about State funding mechanisms, including State funding made available by agencies other than the SEA, and who can respond to questions OSEP may have about the data.

States may meet the MFS requirement in 20 U.S.C. 1412(a)(18) and 34 CFR § 300.163 on either a total or per capita basis. In order to complete Section V.A. of the Application, States must provide, in whole dollars, the total amount of State financial support made available for special education and related services for children with disabilities. However, if a State met the MFS requirement on a per capita basis, it may also provide, in whole dollars, the amount of State financial support made available for special education and related services per child with a disability during SFYs 2021 and 2022. In addition, if the State reports data for SFY 2021 in its FFY 2023 Application that differs

from the data the State submitted for SFY 2021 in its FFY 2022 Application, the State should be prepared to explain the discrepancy.

If you have any questions regarding Section V.A., please contact your OSEP State Lead before the Application due date.

10. Significant Disproportionality

Background

On December 19, 2016, the Department published regulations that require States to use a standard methodology to determine if significant disproportionality based on race or ethnicity is occurring in the State and the LEAs of the State with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions. These regulations are now in effect.

In accordance with 34 CFR § 300.647(b)(7), each State must report to the Department on all risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress if the State uses the “reasonable progress” flexibility in 34 CFR § 300.647(d)(2), and the rationales for each. Under § 300.647(b)(7), rationales for minimum cell sizes that exceed 10 and minimum n-sizes that exceed 30 must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the State is appropriately analyzing and identifying LEAs with significant disproportionality based on race and ethnicity, in the identification, placement, or discipline of children with disabilities. Additionally, pursuant to the authority established in IDEA section 618(a)(3), each applicant must also provide the number of years of data it uses in making annual determinations of significant disproportionality.

Implications for the IDEA Part B Grant Application Submission

Although reporting these data on significant disproportionality is not an eligibility requirement for an IDEA Part B grant award, the Department is collecting this data in the IDEA Part B State grant application package. In 2020, each State provided its initial submission of this information to the Department by completing a **Significant Disproportionality Reporting Form** with its FFY 2020 IDEA Part B grant Application. After the initial submission of the Form, a State **will only be required** to submit the Form with any future annual IDEA Part B State grant Applications if the State modifies its risk ratio thresholds, minimum cell sizes, minimum n-sizes, standards for measuring reasonable progress, and rationales for each, or the number of years of data used in making annual determinations of significant disproportionality.

If you have revised your Significant Disproportionality procedures or have any questions regarding Section V.B. of the grant Application, please contact your OSEP State Lead before the Application due date.

11. 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 section 441(b)(7) of GEPA (20 U.S.C.

1232d(b)(7)). 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. EDGAR at 34 CFR § 76.102 makes clear that the Part B Applications are considered State plans.

States must 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). 34 CFR § 300.165.

Therefore, prior to submitting your Part B Application for FFY 2023 funds, your State must publish the Application, including the “Excel Interactive Spreadsheet,” 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 Department recognizes the continued need for flexibility in the manner in which States can meet IDEA’s public participation requirements for their FFY 2023 IDEA Part B Applications. Accordingly, in meeting the requirements related to public hearings for FFY 2023 IDEA Part B Applications, OSEP is confirming that States may use virtual hearings for the limited purpose of this Application period and any amendments to this Application. States should consult with their attorneys prior to conducting virtual hearings for this purpose to ensure that this practice is not prohibited under State law.

Virtual hearings must be accessible consistent with applicable federal civil rights laws, to ensure that individuals with disabilities have ample opportunities to participate. We recommend holding at least one hybrid hearing (to allow in-person participation in addition to any virtual hearings) to ensure that individuals with limited access to technology also can participate.

12. 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 is for FFY 2023, 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. 20 U.S.C. 1411(d)(3)(A) and 34 CFR § 300.703(c).

At this point, all States are ensuring that FAPE is available 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 2023, 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 2023-2024. 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” 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 24, 2023, we will assume you agree with our determination.

13. Submission of Application Packet/Due Date

OSEP is providing States with the same flexibilities for submission of the FFY 2023 IDEA Part B Application as it did for the FFY 2020 through FFY 2022 IDEA Part B Applications. Specifically, OSEP is providing, for the FFY 2023 IDEA Part B Application, the ability of each SEA to submit a pdf copy of your State’s FFY 2023 IDEA Part B grant Application, with an electronic signature and date, by the Application due date. This “e signature” can be a two-factor authenticated signature or an image file of the signature of the SEA director or their designee who has the authority to provide the certifications and assurances required by the Application and sent from the .gov email address of the individual signing the Application.

As with the FFY 2020 through FFY 2022 IDEA Part B Applications, OSEP will review the Application and conduct a signature verification process. The SEA director or their designee should be prepared to provide a timely response to OSEP staff when contacted regarding any additional steps needed to authenticate and verify the signature on the State's FFY 2023 IDEA Part B grant Application.

The **pdf copy of your State's FFY 2023 grant Application** and supporting documents must be **emailed to OSERS.bapp@ed.gov by May 24, 2023**. The documents must be sent from an official State government email address.

After submission of the pdf documents, you must submit a hard copy of the Application and supporting materials to OSEP by mail. The **due date for submission of the hard copy Application** and supporting documents is **no later than August 1, 2023**. Please mail the hard copy documents to the following address:

U.S. Department of Education
Potomac Center Plaza
Mail Stop 2600, Room 5031-A
550 12th Street, SW
Washington, DC 20202

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 the revised version, including a new signature page, prior to making the grant. If you are required to submit a revised version with a new signature, the submission date of your Application will be the date OSEP receives this revised version. Similarly, if corrections are needed to Section V, we will require that the revised version of Section V be appropriately signed and dated (i.e., after the revisions were made) and that we receive a revised version, including a new signature page.

As discussed more fully in Section 14 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 May 24, 2023.

14. 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 24, 2023, as the submission date for all documents necessary to demonstrate eligibility for FFY 2023 grant awards under 20 U.S.C. 1411 and 1419 of the 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 FFY 2023 Application to OSEP by May 24, 2023, may be later than July 1, 2023.

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, 2023, 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, 2023).

If a State has submitted a substantially approvable Application by the May 24, 2023 deadline, the Federal funding period as noted in block 6 on the grant award notification will begin July 1, 2023. If the Department receives a State's substantially approvable FFY 2023 Application after the May 24, 2023 deadline, but before July 1, 2023, the starting date for obligating funds will be July 1, 2023, provided that the Department is able to determine that the Application is substantially approvable prior to July 1, 2023. If the Department is unable to determine that the Application is substantially approvable prior to July 1, 2023, 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 FFY 2023 Application after July 1, 2023, 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 the FFY 2023 Part B Application, an Application is "substantially approvable" when the Department is satisfied that it meets the requirements in this Application package, and the State has submitted any clarifications, amendments or assurances requested by OSEP.

15. Conclusion

As explained in this memorandum, it is important that, before submitting its Application for FFY 2023, 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;
- Completed Section V of the Application, with the signature of the State Budget Officer or his or her Authorized Representative;
- Reviewed the “Year of Age Cohorts for Which FAPE is Ensured” chart and notified OSEP of any errors or changes;
- Attached the revised GEPA section 427 form to the State’s FFY 2023 IDEA Part B Application
- Met the IDEA Part B public participation requirements as described in this memorandum;
- Prepared and submitted a pdf copy of the completed Application, with an electronic signature, to be submitted to OSEP by email from the SEA’s .gov email address by May 24, 2023; and
- Prepared and submitted a hard copy of the fully and correctly completed FFY 2023 Application, **with an original signature, including a separate original signature on Section V.A., by August 1, 2023.**

Should you need assistance in implementing the requirements of IDEA Part B and/or meeting the Application requirements for FFY 2023 grants under Part B, contact your State Lead.

Attachments:

- Annual State Application Under Part B of the Individuals with Disabilities Education Act for Federal Fiscal Year 2023 (CFDA Nos. 84.027A and 84.173A)
- Instruction Sheet for Part B Annual State Application: FFY 2023
- GEPA section 427 Form
- Year of Age Cohorts for Which FAPE is Ensured
- EDGAR 34 CFR § 76.703 – When A State May Begin To Obligate Funds
- Build America Buy America Sourcing Requirements Grant Condition Required Domestic Sourcing Under the Build America Buy America Act (BABAA)