

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument (FMI): FFY 2016

New Mexico Public Education Department (NMPED)

Please note the following abbreviations are used in the Fiscal Monitoring Instrument (FMI):

FFY – Federal fiscal year

IDEA – Individuals with Disabilities Education Act

LEA – local educational agency

MFS – maintenance of State financial support

OMB – Office of Management and Budget

OIG – Office of the Inspector General

SEA – State education agency

Uniform Guidance – Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards codified in 2 CFR Part 200

Scope of Monitoring:

OSEP's Fiscal Monitoring in 2017 examined two areas: LEA Allocations and Subrecipient Monitoring. In conducting the monitoring, OSEP reviewed information from FFYs 2014, 2015 and 2016, including State-submitted documentation and other available information; audits conducted under the Uniform Guidance and those conducted through the OIG. OSEP conducted both on-site and telephone interviews with State staff.

IDEA Part B Summary of Monitoring Criteria

Monitoring Area 1, IDEA Part B: LEA ALLOCATIONS

The IDEA Part B 611 and 619 funds are to assist States, and through them, LEAs, in providing special education and related services to children with disabilities. States are required to distribute any section 611 and section 619 funds that the State does not reserve for State-level activities to eligible LEAs for use in accordance with the IDEA. States' correct allocation of IDEA funds to LEAs, consistent with statutory and regulatory formulas, is critical in helping to ensure that IDEA Part B funds are used appropriately for the purposes for which they were intended.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.1	The SEA distributes IDEA section 611 and section 619 allocations to eligible LEAs based upon the correct formula for calculating base payments.	No	34 CFR §§ 300.705(a)-(b)(1), 300.815-300.816(a)
Criterion 1.2	The SEA calculates LEA base payment adjustments consistent with IDEA requirements.	No	34 CFR §§ 300.705(b)(2), 300.815, 300.816(b); 34 CFR Part 76 Subpart H
Criterion 1.3	The SEA allocates remaining section 611 and/or section 619 funds to LEAs, including charter school LEAs, based on population and poverty consistent with IDEA requirements.	No	34 CFR §§300.705(b)(3), 300.816(c) and (d),
Criterion 1.4	The SEA ensures that IDEA funds are properly allocated to IDEA through subgrants to eligible charter school LEAs that open or significantly expand their enrollment.	No	34 CFR §§76.792 – 76.793

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.5	The SEA reallocates section 611 and/or section 619 funds to eligible LEAs, including charter school LEAs, consistent with IDEA requirements.	No	34 CFR §§300.705(c) and 300.817.
Criterion 1.6	The SEA ensures that FFY 2015 section 619 allocations were made consistent with IDEA requirements although the FFY 2015 allocations to States for section 619 grants were below the 1997 appropriation level.	No	34 CFR §300.816

Finding:

None.

Monitoring Area 2, IDEA Part B: SUBRECIPIENT MONITORING

Under the IDEA and Uniform Guidance, SEAs are responsible for oversight of the operations of IDEA supported activities. Each SEA must monitor its own activities, and those of its LEAs, to ensure compliance with applicable Federal requirements and that performance expectations are being achieved. Monitoring must cover each program, function, or activity. Subrecipient monitoring is at the core of the SEA's general supervisory responsibilities, and can help the SEA ensure that its LEAs are in compliance with IDEA and related requirements, as well as aligned with SEA priorities designed to improve results for children with disabilities. The focus of this activity was to review the State's fiscal subrecipient monitoring.

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 2.1	The SEA ensures that every subaward is clearly identified to the subrecipient as a subaward and includes required information at the time of the subaward. If any of the data elements change, the SEA includes the changes in subsequent subaward modification.	No	2 CFR §200.331(a)
Criterion 2.2	The SEA evaluates each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.	Yes	2 CFR §200.331(b)
Criterion 2.3	The SEA monitors the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.	Yes	2 CFR §200.331(d), CFR §§300.149 and 300.600

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 2.4	Depending upon the assessment of risk posed by the subrecipient, the SEA has policies and procedures that consider monitoring activities of LEAs ranging from technical assistance to on-site monitoring or conducting agreed-upon-procedures engagements (audits).	No	2 CFR §200.331(e)
Criterion 2.5	The SEA conducts monitoring activities that verify that every subrecipient is audited in accordance with the Uniform Guidance.	No	2 CFR §200.331(f)
Criterion 2.6	The SEA considers enforcement actions against noncompliant subrecipients as required under the Uniform Guidance and IDEA.	No	2 CFR §§200.338 and 200.331(h); 34 CFR §§300.149, 300.222, 300.600, and 300.604.

Finding:

Criterion 2.2: During OSEP’s virtual fiscal monitoring, conducted on July 10 and 11, 2017, OSEP asked about the State’s mechanism for evaluating each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring. The State reported that it had revised its fiscal monitoring procedures to meet the requirements of the Uniform Guidance. According to the State’s special education monitoring procedures,¹ the NMPED’s general supervision system is designed with an integrated approach to accountability which includes, but is not limited to, integrated fiscal accountability, targeted technical assistance and professional development as well as, integrated monitoring activities. As a part of this accountability system, subrecipient monitoring is included. According to the *Public Education Department Federal Programs and Administrative Service Department Policy and Procedure Subrecipient Monitoring*, during the

¹ New Mexico’s Integrated Special Education Accountability System—a Comprehensive Monitoring Approach to Improving Outcomes for Students with Disabilities, was revised January 2016.

award monitoring period, as a part of the information gathering process, a letter is sent by the NMPED to subrecipients which asks if the subrecipient was monitored and if audit findings were made. If the subrecipient had audit findings related to federal awards, corrective action plans (CAPs) are then developed by the NMPED. Thereafter, based on the CAP and the type of audit finding, specific document submissions and frequency of those submissions are specified. According to NMPED procedures, the three types of audit findings are: (1) material weakness, (2) significant deficiency and (3) other matters. Under this structure, an LEA with “material weakness” findings are subject to document submission to the NMPED every three months or sooner and is designated as a “high risk grantee”. An LEA with “significant deficiency” findings is subject to a required document submission to the NMPED every six months or sooner and is designated as a “medium risk grantee”. An LEA with findings in the “other matters” category is subject to document submission to NMPED every six months or sooner and is designated as a “low risk grantee”. The State then uses the assigned risk determinations as a part of the criteria when making annual LEA determinations under section 616(b)(1)(A) of the IDEA. Therefore, under the State’s current accountability system, the determinations of risk of noncompliance applied by the NMPED to its LEAs are used for the purposes of making LEA determinations under 34 CFR §300.600(a)(2) and are not used for the purposes of determining the appropriate subrecipient monitoring activities. NMPED did not identify any mechanism that it is using to evaluate an LEA’s risk of noncompliance for purposes of determining appropriate subrecipient monitoring activities. Therefore, OSEP finds that the State’s policies, and procedures are not reasonably designed to evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring activities, as required by 2 CFR §200.331(b).

Citation:

Under 2 CFR §200.331(b), all pass-through entities must evaluate each subrecipient’s risk of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward for the purposes of determining the appropriate subrecipient monitoring described in section 2 CFR §200.331(d) and (e), which may include consideration of factors such as: (1) The subrecipient’s prior experience with the same or similar subawards; (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F — Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program; (3) Whether the subrecipient has new personnel or new or substantially changed systems; and (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

Further action required:

Within 90 days of the date of this letter, the State must submit to OSEP:

1. Revised policies and procedures that demonstrate that the State allows for the evaluation of each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring, consistent with 2 CFR §200.331(b)(1)-(4).

With the 2017 SPP/APR due on February 1, 2019, the State must submit evidence of implementation of the revised policies and procedures demonstrating that the State evaluates each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring, consistent with 2 CFR §200.331(b)(1)-(4).

Finding:

Criterion 2.3: Based on OSEP's January 11, 2016 fiscal monitoring letter, and the additional documentation reviewed and interviews conducted during OSEP's 2017 fiscal monitoring, OSEP finds that:

- 1) The State does not have a mechanism that is reasonably designed to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved, as required by 2 CFR §§200.328(a), 200.331(d) and 34 CFR §§300.149, 300.600. Accordingly, while a State has flexibility to determine the methods it uses to conduct subrecipient monitoring, a State must have a system reasonably designed to ensure that LEAs comply with fiscal requirements applicable to Part B of the IDEA.
- 2) The State does not have policies and procedures to issue a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity, as required by 2 CFR §200.521.

OSERS/OSEP first documented findings on NMPED's subrecipient monitoring system in a program determination letter (PDL) dated September 13, 2012. In that PDL, OSERS required the State to provide: (1) a copy of NMPED's subrecipient monitoring policies, procedures and protocols used to ensure LEA compliance with the IDEA and EDGAR requirements; (2) with its FFY 2011 Annual Performance Report (APR), due February 1, 2013, documentation demonstrating that the NMPED implemented these policies and procedures and (3) documentation demonstrating that the NMPED has reviewed and issued management decisions on audit findings within six months after receipt of the LEA's audit report. The State did not provide the required documentation related to the

implementation of its subrecipient monitoring procedures nor did the State provide documentation demonstrating that the NMPED reviewed and issued management decisions on audit findings within six months of the LEA's audit report. On March 31, 2014, the State provided their policies and procedures related to the findings in the PDL. Thereafter, in the fiscal monitoring letter dated January 11, 2016, OSEP found that the State did not have a system reasonably designed to ensure that LEAs comply with the fiscal requirements applicable to Part B of the IDEA, as required at that time under 34 CFR §§80.26(b)(2) and (3), 80.40(a), 300.149, and 300.600, and OMB Circular A-133, Subpart D, §400(d)(5).² In the 2016 letter OSEP stated that it would continue to work with NMPED on this issue through its audit resolution process. For additional information please see the New Mexico Fiscal Monitoring letter at <http://www2.ed.gov/fund/data/report/idea/partbfymltrs/index.html#nm>.

Additionally, based on information the State provided during OSEP's 2017 fiscal monitoring related to Criterion 2.2, the NMPED's subrecipient monitoring activities are limited to the results of IDEA A-133 audit findings. According to the State's policies and procedures, during the monitoring period, LEAs are asked: (1) If they were subject to an A-133 audit, single audit, and had to be audited; (2) If the required audit was completed within nine months of the end of the subrecipient's audit period; and (3) if the subrecipient had audit findings related to Federal awards. According to the State's policies and procedures, the results of the audit findings either lead to a CAP, impact determinations or both. Consequently, unless an LEA receives an A-133 audit there is no mechanism to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved as required by 2 CFR §200.331(d), 34 CFR §§300.149, and 300.600. Moreover, as a part of OSEP's fiscal monitoring, the State was required to submit to OSEP findings made against LEAs to demonstrate implementation of the State's subrecipient monitoring structure. Upon review of the State's data, it appears all findings made by the NMPED against LEAs were issued solely under the State's audit structure.

Furthermore, when asked about policies and procedures that ensure the issuance of management decisions on audit findings, the State responded that management decisions are issued by the State and that the documentation would be forwarded to OSEP. Subsequently, on September 12, 2017, during a technical assistance visit to NMPED, OSEP followed up with SEA staff and requested evidence that the SEA issued management decisions on audit findings as required by 2 CFR §200.331(d)(3). At that time, State staff explained that management decisions are not issued.

² Effective July 1, 2015, for IDEA FFY 2015 for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provisions governing audit requirements at Subpart F of 2 CFR Part 200 and monitoring and reporting program performance at 2 CFR §§200.328 and 200.331 replace the provisions previously found at 34 CFR §§80.26(b)(2) and 80.40(a), respectively.

Citation:

Under 2 CFR §200.331(d), the State must monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. The State's monitoring of the subrecipient must include, among other things, following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the State identified through audits, on-site reviews, and other means. In addition, under 2 CFR §200.328(a), 34 CFR §§300.149 and 300.600, the State must monitor grant- and subgrant-supported activities to ensure compliance with applicable Federal requirements, including fiscal requirements, and must ensure that when it identifies noncompliance with the requirements by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance. Additionally, in accordance with 2 CFR §200.331(d)(3), the pass-through entity monitoring of the subrecipient must include a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR §200.521.

Further Action Required:

Within 30 days of the date of this letter, the State must submit to OSEP a plan for meeting the specific required actions detailed below. Within 90 days of the date of this letter, the State must submit to OSEP:

1. Revised State policies and procedures for subrecipient monitoring, including procedures for correction of identified noncompliance, consistent with the requirements of IDEA, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), and the Uniform Guidance; and
2. Revised State policies and procedures that demonstrate that the State ensures management decisions are issued on audit findings pertaining to the Federal award in accordance with 2 CFR §§200.331(d)(3) and 200.521.

With the FFY 2017 APR, due February 1, 2019, the State must provide evidence that it has implemented the subrecipient monitoring procedures.