

# Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument (FMI): FFY 2015

New York State Education Department (NYSED)

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**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 Inspector General

SEA – State educational agency

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

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## **Scope of Monitoring:**

OSEP's Fiscal Monitoring in 2016 examined two areas: LEA Allocations and Subrecipient Monitoring during FFY 2015 (2015-16). In conducting the monitoring, OSEP reviewed information from FFYs 2013, 2014, and 2015, 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 Criterion**

**Monitoring Area 1, IDEA Part B: LEA ALLOCATIONS**

The IDEA Part B section 611 and section 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 Part B funds to LEAs, consistent with the correct formulas, is critical in helping to ensure that IDEA Part B funds are used appropriately for the purposes for which they were intended.

<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirements</b>
<b>Criterion 1.1</b>	The SEA distributes IDEA section 611 and/or section 619 allocations to eligible LEAs based upon the correct formula for calculating base payments.	Yes	34 CFR §§300.705(a)-(b)(1), 300.815-300.816(a)
<b>Criterion 1.2</b>	The SEA calculates LEA base payment adjustments under section 611 and/or section 619 consistent with IDEA requirements.	Yes	34 CFR §§300.705(b)(2), 300.816(b); 34 CFR Part 76 Subpart H; December 2000 Nonregulatory Guidance on 34 CFR Part 76 Subpart H, titled "How Does a State or Local Educational Agency Allocate Funds to Charter Schools That Are Opening for the First Time or Significantly Expanding Their Enrollment?"
<b>Criterion 1.3</b>	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 Number	Description	Noncompliance identified?	Applicable Requirements
<b>Criterion 1.4</b>	The SEA ensures that IDEA funds are properly allocated through subgrants to eligible charter school LEAs that open or significantly expand their enrollment.	N/A <sup>1</sup>	34 CFR §§76.792 –76.793; December 2000 Nonregulatory Guidance on 34 CFR Part 76 Subpart H, titled “How Does a State or Local Educational Agency Allocate Funds to Charter Schools That Are Opening for the First Time or Significantly Expanding Their Enrollment?”
<b>Criterion 1.5</b>	The SEA ensures that FFY 2015 section 619 allocations were made consistent with IDEA requirements, given that the FFY 2015 allocations to States for section 619 grants were below the 1997 appropriation level.	No	34 CFR §300.816

**Finding:** Criterion 1.1: In OSEP’s February 25, 2016 fiscal monitoring letter, OSEP identified noncompliance regarding the State’s procedures for allocating the IDEA section 611 and section 619 subgrants to eligible LEAs. As discussed during the onsite fiscal review conducted September 28-30, 2016, the SEA has not completed all of the corrective actions required in the February 25, 2016 letter.

**Citation:** Under 34 CFR §300.705(a), “[e]ach State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under 34 CFR §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act.” These funds must be allocated to LEAs in accordance with the required formula in 34 CFR §300.705(b). Under 34 CFR §300.815, “[e]ach State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under 34 CFR §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act.” These funds must be allocated to LEAs in accordance with the required formula in 34 CFR §300.816.

**Further Action Required:** OSEP will notify the State under separate cover when the corrective actions identified in the February 25, 2016 letter have been completed.

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<sup>1</sup> As reported by the State, there are no LEA charter schools in New York.

**Finding:** Criterion 1.2: During the onsite fiscal review conducted September 28-30, 2016, the SEA reported that it did not have procedures to calculate LEA base payment adjustments under section 611 and section 619 consistent with IDEA requirements.

**Citation:** Under 34 CFR §§300.705(b)(2) and 300.816(b), base payment adjustments must be made if a new LEA is created; if one or more LEAs are combined into a single new LEA; if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities change; or if an LEA received a base payment of zero in its first year of operation but reports that it is serving any children with disabilities in a subsequent year.

**Further Action Required:** Subsequently, in the December 19, 2016 email correspondence, the State provided documentation that demonstrates the State corrected the identified noncompliance. No further action is required.

## Monitoring Area 2, IDEA Part B: SUBRECIPIENT MONITORING

Under the IDEA and the 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.	Yes	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), 34 CFR §§300.149 and 300.600
Criterion 2.4	Depending upon the assessment of risk posed by the subrecipient, the SEA has policies and procedures that consider monitoring activities 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 as required by the Uniform Guidance.	No	2 CFR §200.331(f)

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 2.6	The SEA considers taking 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 2.1: Based on the review of documents and confirmed through meetings with NYSED September 28-30, 2016, OSEP finds that the State does not have procedures to ensure that every subaward includes the information required under 2 CFR §200.331(a) at the time of the subaward. Specifically, the subgrant document does not include the correct amount of Federal funds obligated to the subrecipient (2 CFR §200.331(a)(1)(vi)), or the correct funding dates/period of performance (2 CFR §200.331(a)(1)(v)). In addition, in two out of the three sample documents provided by NYSED, the regulation cited is 34 CFR §301, instead of 34 CFR §300. 2 CFR §200.331(a)(2)

**Citation:** All pass-through entities must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information contained in 2 CFR §200.331(a) at the time of the subaward: (1) Federal award identification information (including subaward period of performance start and end date, and the total amount of federal funds obligated to the subrecipient by the pass-through entity including the current obligation); (2) all requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award; (3) any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports; (4) an approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part) or a de minimis indirect cost rate as defined in 2 CFR §200.414 Indirect (F&A) costs, paragraph (f); (5) a requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient’s records and financial statements as necessary for the pass-through entity to meet the requirements of 2 CFR Part 200; and (6) appropriate terms and conditions concerning closeout of the subaward.

**Further Action Required:** Within 90 days of the receipt of this letter, the State must submit to OSEP:

1. Revised State policies and procedures that demonstrate the State will ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information required under 2 CFR §200.331(a) at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification.

A copy of the correspondence in which the State has informed its State audit office that is responsible for conducting audits in accordance with the Single Audit Act and the Uniform Guidance, of this finding of noncompliance and OSEP’s required corrective actions.

**Finding:** Criteria 2.2 and 2.3: Based on the review of documents and confirmed through meetings with NYSED September 28-30, 2016, OSEP finds that the State does not have procedures to evaluate each subrecipient's risk of noncompliance for purposes of determining the appropriate subrecipient monitoring or to monitor subrecipients to ensure that the IDEA subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward. Specifically, the State reported that due to staff turnover, the State did not have a process in place to evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, as required under 2 CFR §200.331(b). In addition, the State reported that it did not have a process in place to ensure that LEAs comply with the fiscal requirements applicable to Part B of the IDEA, as required under 2 CFR §200.331(d) and 34 CFR §§300.149 and 300.600(e). For example, the State reported that it does not have a mechanism to ensure that LEAs are resolving audit findings, but instead relies on auditors to identify the issue in subsequent years if the LEA has not otherwise corrected the noncompliance.

**Citation:** Under 2 CFR §200.331(b), the State (as the pass-through entity) must 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. 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 detected through audits, on-site reviews, and other means. In addition, under 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. 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 IDEA.

**Further Action Required:**

Subsequently, in the November 18, 2016 email correspondence, the State provided revised State policies, as well as a timeline for developing and implementing procedures, for:

- a. 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; and
- b. Subrecipient monitoring to ensure compliance with the fiscal requirements applicable to Part B of the IDEA.

OSEP finds that the revised policies are consistent with 2 CFR §200.331 and 34 CFR §§300.149 and 300.600(e).

However, NYSED must still demonstrate that it is implementing procedures consistent with its policies and the Uniform Guidance and IDEA requirements.

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

- a. Revised State procedures for evaluating each subrecipient's risk of noncompliance with the Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring;
- b. Revised State procedures for fiscal subrecipient monitoring consistent with the requirements of IDEA and the Uniform Guidance;
- c. A copy of the correspondence in which the State has informed its State audit office that is responsible for conducting audits in accordance with the Single Audit Act and the Uniform Guidance, of this finding of noncompliance and OSEP's required corrective actions.

With the FFY 2016 APR, due February 1, 2018, the State must provide evidence that it has implemented the procedures for evaluating each subrecipient's risk of noncompliance and the fiscal subrecipient monitoring procedures.