

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

Ohio Department of Education's Office for Exceptional Children (ODE-OEC)

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

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.

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.1	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)
Criterion 1.2	The SEA calculates LEA base payment adjustments under section 611 and/or section 619 consistent with IDEA requirements.	No	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?" (December 2000 Guidance)
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 Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.4	The SEA ensures that IDEA funds are properly allocated through subgrants to eligible charter school LEAs that open or significantly expand their enrollment.	Yes	34 CFR §§76.792 –76.793; December 2000 Guidance
Criterion 1.5	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 (IDEA section 611 funds). Based on OSEP's review of ODE-OEC's website and ODE-OEC's response and supporting documentation related to the corrective actions it took to address the issues identified by the auditor in the State of Ohio's Single Audit Report for the year ended June 30, 2015¹, and confirmed through meetings with ODE-OEC on September 21, 2016, OSEP found that ODE-OEC is allocating IDEA Part B section 611 subgrants only to those LEAs that report children with disabilities who were receiving special education and related services as of the previous year's December child count. ODE-OEC's practice is consistent with the following statement that was previously on ODE-OEC's website: "If an LEA did not receive an FY17 Part-B IDEA allocation, this means the Education Management Information System (EMIS) December Child Count data from FY16 showed no students with disabilities (SWD). In order to receive an IDEA Part-B allocation, the LEA must have SWDs currently receiving special education and related services." Based on its review of this practice and the State's listing of LEA allocations, OSEP identified two charter school LEAs that did not receive an IDEA Part B section 611 subgrant to which they were entitled for FFYs 2015 and 2016.

Citation: 34 CFR §300.705(a) requires SEAs to provide section 611 subgrants to LEAs, including public charter schools that operate as LEAs, that have established their eligibility under IDEA section 613. The IDEA Part B regulations were revised in 2008 to, among other things, require each State to distribute funds to eligible LEAs, including public charter schools that operate as LEAs, even if the LEA is not serving any children with disabilities. As stated in the Analysis of Comments and Changes in the 2008 IDEA Part B regulations, "[e]nsuring that all LEAs, including those that have no children with disabilities enrolled at the beginning of the school year, have section 611 and section 619 funds available will enable LEAs to meet their responsibilities under the Act during the school year if a child with a disability subsequently enrolls or a child is subsequently identified as having a disability." 73 Fed. Reg. 73006, 73024 (Dec. 1, 2008).

Further Action Required: See required actions below on pages six and seven.

¹ In a September 12, 2016, program determination letter, the Office of Special Education and Rehabilitative Services (OSERS) sustained the auditor's findings. See the first finding under Criterion 1.4 below.

Finding: Criterion 1.1 (IDEA section 619 funds). In a meeting with ODE-OEC on September 21, 2016, OSEP found that ODE-OEC provides IDEA section 619 subgrants to all eligible LEAs that apply for IDEA section 619 funds using a formula that includes attributing at least one child with a disability to each LEA. The SEA reported that it uses this methodology as a result of the reductions in the IDEA section 619 grant award to ensure that all LEAs receive a base payment of IDEA section 619 funds because the base payment funds allocated under 34 CFR §300.816 constitute the majority of the IDEA section 619 funds that ODE-OEC subgrants to its LEAs.

Citation: Under 34 CFR §300.815, when subgranting IDEA section 619 funds, a State must distribute all the funds it does not reserve under §300.812 to LEAs, including public charter schools that operate as LEAs, that have established their eligibility under IDEA section 613 and that are responsible for providing education to children aged three through five years, even if the LEA is not serving any preschool children with disabilities. An LEA's section 619 subgrant is made up of three components – the base payment, the population payment, and the poverty payment, consistent with §300.816(a) and (c). The amount of the base payment is equal to the amount the LEA would have received under section 619 of the IDEA for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as such section was then in effect, unless the LEA was affected in a subsequent year by a base payment adjustment pursuant to §300.816(b). If an LEA was in existence in FFY 1997 and received a section 619 subgrant in FFY 1997, the amount of the LEA's base payment is based on the child count on December 1, 1996, not the current child count. Therefore, there could be circumstances in which an LEA receives a base payment in a year in which it is serving no children with disabilities – for example, if an LEA in existence in FFY 1997 received a section 619 subgrant in FFY 1997, the LEA would be entitled to a base payment in subsequent FFYs even if it was serving no children with disabilities in a given year. (If an LEA was not in existence in FFY 1997, or if a charter school LEA opens for the first time or significantly expands its enrollment, the amount of the LEA's base payment, if any, is based on the base payment adjustment provisions, which, in most circumstances (see 34 CFR §§300.816(b)(1), (3), (4), and §§76.791-76.792, and the U.S. Department of Education's (Department's) December 2000 Guidance),² are based on the relative numbers of children with disabilities ages three through five currently provided special education by each affected LEA. Once that LEA receives a base payment in accordance with the base payment adjustment provisions, it is entitled to a base payment in subsequent FFYs even if it serves no children with disabilities in a given year.) There are also circumstances in which an LEA eligible for a section 619 subgrant could receive no base payment – specifically, if an LEA was not in existence in FFY 1997 and served no children with disabilities in its first year of operation, the LEA would receive a base payment of zero each year, until the first fiscal year after the first annual child count in which it reports serving children with disabilities aged three through five years, consistent with §300.816(b)(4). Note, however, that, if the LEA receives a base payment of zero in a given year but is eligible for a section 619 subgrant, the LEA would be entitled to receive a section 619 subgrant consisting of the population and poverty

² Although the regulatory citations have not been updated to reflect the IDEA Part B regulations issued on August 14, 2006, and December 1, 2008, the substance of the December 2000 Guidance remains applicable and is posted on the Department's Web site. (See <http://www2.ed.gov/policy/elsec/guid/cschoools/cguidedec2000.pdf>.) See questions 79 and 80 regarding base payment adjustments for charter school LEAs that significantly expand their enrollment.

payments. Therefore, using a formula that automatically attributes at least one child with a disability to each LEA for allocating section 619 subgrants to eligible LEAs is inconsistent with the allocation provisions prescribed by the IDEA.

Further Action Required: See required actions below on pages six and seven.

Finding: Criterion 1.4 (IDEA section 611 and section 619 funds). As reported in the State of Ohio's Single Audit Report for the year ended June 30, 2015, and sustained by OSERS in a program determination letter issued on September 12, 2016³, ODE-OEC does not have a reasonably designed system in place to provide IDEA Part B allocations to its new and significantly expanded charter school LEAs consistent with the requirements in 34 CFR §§300.705, 300.815, and 300.816, or the requirements in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §§76.789 through 76.799. ODE-OEC's *Reallocation of ESEA and IDEA Grant Business Rules* do not reflect the EDGAR requirements in 34 CFR §§76.792 and 76.793 with regard to ODE-OEC's responsibility to provide charter school LEAs with allocations in a timely manner, based on when those LEAs open or significantly expand their enrollment. Specifically, ODE-OEC's procedures do not reflect the requirement that charter school LEAs opening or significantly expanding their enrollment on or before November 1 of an academic year receive the proportionate amount of IDEA Part B funds for which the charter school LEA is eligible, and the procedures also do not contain the requirement that charter school LEAs that open or significantly expand their enrollment between November 1 and February 1 of an academic year receive at least a pro rata portion of the proportionate amount of the funds for which they are eligible.⁴ Due to these issues, the adjustments made by ODE-OEC, in response to the State's Single Audit Report, to make correct IDEA Part B allocations to new or significantly expanding charter school LEAs were potentially inaccurate. Finally, in its response to the State of Ohio's Single Audit Report, ODE-OEC indicated that IDEA Part B allocations were not made to significantly expanded charter school LEAs, because the State did not have a clear definition of "significant expansion" for IDEA Part B grants at the time of the audit. Consequently, those charter school LEAs that would have met the State's current definition of "significant expansion" have not received the full amount of the section 611 and/or section 619 funds to which they were entitled in FFY 2015.⁵

Citation: Under 34 CFR Part 76 Subpart H and as further clarified in the Department's December 2000 Guidance, ODE-OEC must have procedures in place to provide IDEA section 611 and section 619 subgrants to, and to adjust IDEA section 611 and section 619 subgrants for, charter school LEAs that are opening for the first time or significantly expanding their enrollment. The lack of accurate

³ In the program determination letter, OSERS stated it would resolve this finding under separate cover, through OSEP's fiscal monitoring process.

⁴ During the site visit, ODE-OEC told OSEP that State law requires a new charter school to open by September 30 with a sufficient number of students or its contract to operate will be voided by the State. After the visit, OSEP's review of Ohio's Charter School laws found at least two exceptions to this requirement, including exceptions for new charter schools that have sponsors with an "exemplary" rating for two consecutive years and for charter schools that solely serve students who have dropped out of school.

⁵ Ohio's single audit report repeated the findings for the year ending June 30, 2016. The Department has yet to issue a program determination letter on the findings contained in the audit report for the year ending June 30, 2016.

procedures has also resulted in allocations findings under criteria 1.1 and 1.4. In addition, the lack of a clear, or any, definition of "significant expansion" does not relieve the State of its responsibility to ensure that significantly expanding charter school LEAs receive the correct allocations that they are entitled to receive, in accordance with 34 CFR §§300.705(b) and 300.816(b), Subpart H of 34 CFR Part 76, and the December 2000 Guidance.

Further Action Required: See required actions below on pages six and seven.

Finding: Criterion 1.4 (IDEA section 611 and section 619 funds). Based on discussions with ODE-OEC on September 21, 2016, OSEP found that ODE-OEC is providing initial IDEA Part B allocations to new charter school LEAs by using a uniform estimate of 60 children enrolled, 45 of whom are children living in poverty and 16 of whom are children with disabilities. The State uses this estimate as those figures represent the average size of a new charter school LEA that opens in Ohio. ODE-OEC allocates IDEA Part B funds based on actual enrollment data for the charter school LEA's second year of operation, but does not make adjustments to the initial IDEA section 611 or section 619 subgrant awards to the charter schools after ODE-OEC has obtained enrollment data for the charter school LEA's first year of operation.

Citation: Under 34 CFR §76.789(b)(2), SEAs may allocate funds to, or reserve funds for, an eligible charter school LEA based on reasonable estimates of projected enrollment at the charter school LEA. Once a charter school LEA has opened or significantly expanded its enrollment, the charter school LEA must provide the actual enrollment or eligibility data to the SEA at a time the SEA may reasonably require. 34 CFR §76.788(b)(2)(i). SEAs that allocate more or fewer funds to a charter school LEA than the amount of IDEA Part B funds to which the charter school LEA is entitled, must make an adjustment to the estimated allocations based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA first opens or significantly expands its enrollment, even if allocations or adjustments to allocations to other LEAs in the State are based on enrollment or eligibility data from a prior year. 34 CFR §76.796. ODE-OEC must make any necessary adjustments to the base, population, and poverty payments for the charter school LEAs' IDEA section 611 and section 619 subgrants on or before the date the SEA allocates funds to LEAs under IDEA Part B for the succeeding academic year. 34 CFR §76.797(a). In allocating IDEA Part B funds to a charter school LEA based on adjustments, the SEA may use IDEA Part B funds from the SEA's allocation for the academic year in which the charter school LEA opened or significantly expanded its enrollment, or from the SEA's allocation for the succeeding academic year. 34 CFR §76.797(b).

Further Action Required: See required actions below on pages six and seven.

Further Action Required for Criteria 1.1 and 1.4: Within 90 days of the receipt of this letter, the State must submit to OSEP:

1. Documentation demonstrating that any LEA that received less than the amount of section 611 or section 619 funds to which it was entitled in FFY 2015 and/or FFY 2016 was made whole, or a plan outlining how the State will make these LEAs whole during FFY 2016, in accordance with 34 CFR §§300.705, 300.815-300.816, 76.791-76.793, and the Department's December

2000 Guidance. The State may use any remaining FFY 2015 and/or FFY 2016 section 611 and/or section 619 State set-aside funds for this purpose.

2. Revised State policies and procedures that demonstrate the SEA will allocate IDEA Part B section 611 and section 619 subgrants to all eligible LEAs, including new or significantly expanding charter school LEAs, in accordance with 34 CFR §§300.705, 300.815-300.816, 34 CFR Part 76 Subpart H, and the Department's December 2000 Guidance, including requirements for how and when the SEA must allocate funds to an eligible charter school LEA that is new or significantly expands its enrollment, beginning in FFY 2017.
3. Revised State policies and procedures that demonstrate that the SEA will adjust the estimated IDEA Part B section 611 and section 619 allocations to new and significantly expanding charter school LEAs to reflect actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA first opens or significantly expands its enrollment, even if allocations or adjustments to allocations to other LEAs in the State are based on enrollment or eligibility data from a prior year, beginning in FFY 2017.
4. 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.

Within 30 days of OSEP's notification to the State that it has approved the revisions made to the policies and procedures, the State must provide documentation that it has notified the LEAs of the revisions.⁶

⁶ Once OSEP has reviewed ODE-OEC's corrective actions and determined them sufficient to address and resolve the noncompliance, OSEP will close the relevant findings in the State of Ohio's Single Audit Report for the year ended June 30, 2015.

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.	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.	No	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 2.3: Based on a review of ODE-OEC's unified grants application portal, the Comprehensive Continuous Improvement Plan (CCIP), OSEP finds that the State was not ensuring that each LEA had submitted a plan that provides assurances to the SEA that the LEA meets each of the conditions in 34 CFR §§300.201 through 300.213 before making its determination that an LEA is eligible for an IDEA Part B subgrant. Specifically, ODE-OEC's portal did not include any of the IDEA Part B assurances contained in 34 CFR §§300.201 through 300.213.

Citation: Under 34 CFR §300.200, an LEA is eligible for assistance under Part B of the IDEA for a fiscal year if the agency submits a plan that provides assurances to the SEA that the LEA meets each of the conditions in 34 CFR §§300.201 through 300.213.

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

1. Policies and procedures that demonstrate that the SEA will ensure that each LEA has submitted a plan that provides assurances to the SEA that the LEA meets each of the conditions in 34 CFR §§300.201 through 300.213 before the SEA determines that an LEA is eligible for assistance under Part B of the IDEA for a fiscal year.
2. 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.