

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

Arkansas Department of Education (ADE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored ADE's procedures for ensuring compliance with the fiscal components of the Individuals with Disabilities Education Act (IDEA) and other related Federal fiscal requirements. In performing this review, OSEP reviewed publicly available information, State-submitted documentation, and Office of Management and Budget (OMB) Circular A-133 and Office of Inspector General audits, and conducted both on-site and telephone interviews with State staff.

Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, IDEA Part B funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR Part 200 and commonly referred to as the Uniform Guidance. The Uniform Guidance provisions in 2 CFR Part 200 replace provisions previously found in EDGAR in 34 CFR Parts 74 and 80 and prior OMB Circulars A-87 and A-133. In addition, effective July 1, 2015, IDEA Part B funds are subject to the revised LEA MOE regulations that were published in the Federal Register on April 28, 2015. See 80 Fed. Reg. 23644 (Apr. 28, 2015). The major changes in the revised LEA MOE regulations include: (1) clarification of the eligibility standard; (2) clarification of the compliance standard; (3) explanation of the Subsequent Years rule; and (4) specification of the consequences for an LEA's failure to maintain effort. In conducting its monitoring, OSEP reviewed State procedures that were in effect prior to July 2015. Therefore, the "Finding" and "Citation" sections of the enclosure include citations to the provisions in the Education Department General Administrative Requirements (EDGAR) in 34 CFR Parts 74 and 80, prior OMB Circulars A-87 and A-133, and the LEA MOE regulations in effect prior to July 1, 2015. However, because the "Further Action Required" section of the enclosure addresses corrective actions the LEA must take after July 1, 2015, that section includes citations to the Uniform Guidance and the revised LEA MOE regulations.

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

AMI – The American Recovery and Reinvestment Act (ARRA) of 2009 Monitoring Inventory

CrEAG – Critical Elements Analysis Guide

EDGAR – Education Department General Administrative Regulations

FFY – Federal Fiscal Year

FS – fiscal systems element of the CrEAG

GEPA – General Education Provisions Act

LEA – local educational agency

MFS – maintenance of financial support

SEA – State educational agency

**IDEA Part B
Summary of Monitoring Criterion**

Monitoring Area 1, IDEA Part B: Obligation/Liquidation			
Criterion Number	Description	Noncompliance identified?	Applicable Requirements
Criterion 1.1	The SEA has procedures to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs based upon the correct formula.	Yes	34 CFR §§300.200, 300.705(a)-(b), 300.815-300.816
Criterion 1.2	The SEA has procedures to ensure that LEAs are provided 27 months to obligate funds.	No	34 CFR §76.709(a)
Criterion 1.3	The SEA has procedures to obligate funds solely during the 27 month period of availability and liquidate funds not later than 90 days after the end of the funding period or an extension of that timeline authorized by the Department.	No	34 CFR §§76.703, 76.709, 80.23
Criterion 1.4	The SEA has procedures to ensure that LEAs obligate funds solely during the 27 month period of availability and liquidate funds not later than 90 days after the end of the funding period or an extension of that timeline authorized by the Department.	No	34 CFR §§76.709, 80.23
Criterion 1.5	The SEA has procedures to reallocate IDEA section 611 and section 619 subgrants, when appropriate, consistent with the regulations.	No	34 CFR §§300.705(c), 300.817
Criterion 1.6	The SEA has procedures to draw down funds based on immediate needs; any interest accrued by the SEA or LEAs in excess of \$100 per year per account is returned to the Department.	No	34 CFR §80.21(c)&(i)

Finding: Criterion 1.1: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State did not have policies and procedures in place before March 2015 to ensure that the State allocates the IDEA section 611 and section 619 subgrants to eligible LEAs, including new and significantly expanding charter schools that operate as LEAs, in accordance with the requirements in 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76. The State indicated in

telephone conversations with OSEP on June 3 and 27, 2014, that it had not made allocations, specifically base payment adjustments, to new and significantly expanding charter school LEAs in a manner consistent with 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76 in previous fiscal years. Additionally, ADE stated that, because it did not keep proper records to demonstrate it was making appropriate section 611 and section 619 allocations to LEAs in previous fiscal years, it is unable to determine whether any LEA received a base payment in previous years that was less than the amount it was entitled to receive under sections 611 and 619, and if so, the amount of such discrepancy.¹ ADE also indicated that it does not have information indicating that any LEA, including new and significantly expanding charter school LEAs, actually received a base payment in previous fiscal years that was less than the amount it was entitled to receive under sections 611 and 619.

Citation: Under 34 CFR §§300.705(a) and 300.815, each State that receives a grant under sections 611 and 619 of the IDEA for any fiscal year must distribute any funds the State does not reserve under 34 CFR §§300.704 or 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 IDEA for use in accordance with Part B of the IDEA. Further, 34 CFR §§300.705(b)(2) and 300.816(b) describe the requirements for making base payment adjustments for section 611 and 619 funds, respectively, when new LEAs are created, one or more LEAs are combined into a single LEA, or if, for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change. Finally, requirements for allocating Federal funds to new and significantly expanding charter schools are detailed in 34 CFR §§76.791-76.794 and in the Department's December 2000 guidance 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).² When making base payment adjustments for new or significantly expanding charter school LEAs, States must use the method described in 34 CFR §§300.705(b)(2)(i) and 300.816(b)(1) for section 611 and 619 funds, respectively, for making base payment adjustments when new LEAs are created. (See Responses to Questions 78-80 in the December 2000 Guidance.)

Further Action Required: Subsequently, on March 10, 2015, in response to the State's FFY 2010, 2011, 2012 and 2013 single State audits, ADE submitted to OSEP its revised policies and procedures demonstrating that the State will allocate the IDEA section 611 and section 619 subgrants to eligible LEAs, including new and significantly expanding charter school LEAs, in accordance with 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76 in FFY 2015 and subsequent years. Based on the specific facts involved, including: (1) the absence of information indicating that any LEA actually received a base payment that was less than the

¹ We also note that in the State's FY 2010, 2011, 2012, and 2013 single State audits, the auditors found that ADE did not have adequate internal controls to ensure that it performed IDEA Part B allocations in accordance with the requirements. Specifically, the auditors indicated that ADE needed to establish procedures to ensure knowledgeable agency personnel adequately review, test, and approve the allocation worksheets used to distribute Federal funding to LEAs. In addition, the auditors found that ADE was unable to provide documentation to support its allocations for the auditors' review.

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>.)

amount it was entitled to receive under section 611 and section 619 in previous fiscal years; (2) the absence of reliable data and documentation for ADE to determine whether any LEA actually received an incorrect base payment in previous fiscal years and, if so, the amount that the LEA was entitled to receive under section 611 and section 619 ; and (3) the State’s revised policies and procedures demonstrating that it will make allocations, specifically base payment adjustments, for new and significantly expanding charter school LEAs in accordance with 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76 in FFY 2015 and subsequent years, OSEP concludes that it is not appropriate at this time to require ADE to determine whether any LEA actually received an incorrect base payment in previous fiscal years. However, OSEP may require further corrective action if additional information becomes available indicating that an LEA actually received a base payment that was less than it was entitled to receive in a previous fiscal year. Within 90 days of receipt of this letter, the State must submit to OSEP:

1. Documentation that the State has notified its LEAs of the revised policies and procedures regarding allocations, specifically base payment adjustments, under section 611 and section 619 of the IDEA; and
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 Subpart F of the Uniform Guidance³, of this finding of noncompliance and OSEP’s required corrective actions.

Monitoring Area 2, IDEA Part B: Use of Funds			
Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 2.1	The SEA has procedures to ensure that funds are expended in accordance with the requirements of the IDEA Part B.	Yes	34 CFR §§300.162(a), 300.202(a)(1)
Criterion 2.2	The SEA has procedures to ensure that LEAs use IDEA funds only to pay the excess costs of providing special education and related services to children with disabilities in accordance with IDEA.	Yes	34 CFR §§300.16, 300.202(a)(2)
Criterion 2.3	The SEA has procedures to ensure that LEAs spend the	No	34 CFR §300.133

³ Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, IDEA Part B funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR Part 200 and commonly referred to as the Uniform Guidance. The Uniform Guidance provisions in 2 CFR Part 200 replace provisions previously found in EDGAR in 34 CFR Parts 74 and 80 and prior OMB Circulars A-87 and A-133.

	required amount on providing special education and related services to parentally-placed private school children with disabilities.		
Criterion 2.4	The SEA has procedures to provide an approved restricted indirect cost rate (RICR) for its LEAs.	No	34 CFR §§76.560-76.569
Criterion 2.6	The SEA has procedures to provide IDEA funds to LEA charter schools in accordance with IDEA and EDGAR.	No	34 CFR §§76.788-76.797, 300.209(c), 300.705(a)-(b), 300.815-300.816
Criterion 2.7	The SEA has procedures to ensure that each LEA provides funds to charter schools that are part of the LEA in the same manner it provides funds to its other schools.	No	34 CFR §§76.799, 300.209(b)

Finding: Criterion 2.1: Based on a review of documentation provided by the State, OSEP finds that the State did not have procedures to ensure that IDEA Part B funds used by LEAs to purchase equipment were used for costs that were necessary and reasonable for proper and efficient performance and administration of IDEA and allocable to the LEAs' IDEA Part B subgrants. In addition, the State did not have procedures to determine if the IDEA Part B program would be improved by allowing funds to be used for this purpose. Specifically, as confirmed by the State in AMI telephone interviews on November 4 and December 2, 2012, ADE approved of LEAs' purchases of school buses using IDEA Part B ARRA funds, without determining if the buses were to be used exclusively for the transportation of students with disabilities in accordance with their individualized education programs (IEPs). In addition, if the buses were to be used for students with disabilities and nondisabled students, the State did not ensure that the amount of IDEA Part B funds used to purchase the buses was proportionate to the number of students with disabilities being transported.

Citation: Under 34 CFR §300.202(a), amounts provided to an LEA under Part B of IDEA must be expended in accordance with the applicable provisions of Part B. Section 605 of IDEA authorizes the Secretary to allow the use of IDEA Part B funds for the acquisition of equipment if the Secretary determines that a program authorized under Part B would be improved by allowing Part B funds to be used for these purposes. See 34 CFR §300.718. In general, to be able to use IDEA Part B funds for these costs, a State must obtain the prior approval of the Department for the State's use of IDEA Part B funds for these costs; and an LEA must obtain the prior approval of the State for the LEA's use of IDEA Part B funds for these costs. (See OMB Circular A-87, Cost Principles for

State, Local and Indian Tribal Governments, (05/10/2004), Attachment B, 15.b. codified at 2 CFR Part 225, Appendix B, 15.b.⁴) For purposes of these prior approval requirements, “equipment” is defined to mean an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. (See 2 CFR Part 225, Appendix B, 15.a.) To be allowable under Federal awards, costs must, among other things, be: (1) necessary and reasonable for proper and efficient performance and administration of Federal awards and; (2) allocable to Federal awards under the provisions of 2 CFR Part 225. (See 2 CFR Part 225, Appendix A., C.1.a. and b.)

Further Action Required: In attachments to emails dated January 13 and 15, 2014, ADE provided documentation of the steps that it took to correct the identified noncompliance. Specifically, ADE conducted a survey of all LEAs that used IDEA Part B ARRA funds to purchase buses. Using this survey, ADE determined for each LEA whether the use of IDEA Part B ARRA funds to purchase buses was allowable, and required the following corrective actions: (1) for any LEA that reported that it used IDEA Part B funds to purchase buses for the purpose of transporting students with disabilities in accordance with IDEA, ADE required the submission of an assurance from the LEA to that effect; and (2) for any LEA that reported that it used IDEA Part B funds to purchase buses for the purpose of transporting students with disabilities and non-disabled students where the amount of IDEA Part B funds used was not proportionate to the number of students with disabilities being transported, ADE required the LEA to transfer the non-proportionate share of the costs of the purchase of the buses from IDEA Part B ARRA funds to non-Federal funds through the use of a journal voucher transfer, and to submit an assurance that any use of IDEA Part B funds must be specific to students with disabilities and the use of these funds is subject to an audit. ADE submitted a list of the affected LEAs and the required actions and samples of assurances and documentation of journal voucher transfers. Finally, ADE provided documentation that it has revised its procedures for reviewing, and approving, requests from LEAs to use IDEA Part B funds to purchase equipment in accordance with the requirements of IDEA and OMB Circular A-87 in order to prevent future noncompliance. No further action is required.

Finding: Criterion 2.2: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that, at the time of telephone interviews conducted on November 14, 2011 and August 13 and 14, 2012, the State’s excess cost computations were inconsistent with requirements set forth in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. Specifically, in order to compute excess costs, the State advised LEAs to multiply the number of children with disabilities in the LEAs’ elementary schools or secondary schools in the preceding school year (rather than the current school year) by the average annual per pupil expenditures (APPE) for the preceding school year. In addition, the State excluded expenditures for food service in calculating the APPE.

Citation: Under 34 CFR §300.202(a)(2) and (b), an LEA must use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities. Excess costs are those costs that are in excess of the APPE in an

⁴ See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provision at 2 CFR §200.439 governing the allowability of equipment and other capital expenditures replaces the provision previously found at OMB Circular A-87, Appendix B, section 15 (codified at 2 CFR Part 225, Appendix B, section 15).

LEA during the preceding school year for an elementary school or secondary school student, as appropriate, and that are computed using the method described in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. In order to compute excess costs properly, when calculating APPE, an LEA must determine the total amount of expenditures for elementary (or secondary) school students from all sources – local, State and Federal – for the preceding school year. The reference in 34 CFR §300.16 and Appendix A is to total expenditures of the LEA for elementary (or secondary) school students, not total expenditures for the education of elementary (or secondary) students. The only possible deductions are those specified in 34 CFR §300.16 and Appendix A. Therefore, expenditures for food services must be included when calculating APPE. See OSEP’s April 8, 2008 Letter to Plagata-Neubauer (108 LRP 65836). After calculating the APPE for the preceding school year in accordance with 34 CFR §300.16 and Appendix A to 34 CFR Part 300, the LEA must multiply the number of children with disabilities in the LEA’s elementary schools or secondary schools in the current school year by the APPE for the preceding school year. As part of its general supervisory responsibilities under 34 CFR §§300.149 and 300.600, the SEA must ensure that LEAs are computing their excess costs in a manner consistent with the above requirements. Further guidance explaining this computation is available on The GRADS 360 website at <https://osep.grads360.org/#program/fiscal-resources>.

Further Action Required: On August 22, 2012, the State provided documentation that it has revised its procedures in accordance with the excess cost requirements in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. No further action is required.

Monitoring Area 3, IDEA Part B: ARRA			
Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 3.1	The SEA ensures that infrastructure investments are properly certified and posted.	Yes	ARRA §1511
Criterion 3.2	The SEA has procedures to ensure that LEAs comply with the “Buy American” requirements.	No	2 CFR §§176.60-176.170
Criterion 3.3	The SEA has procedures to ensure that LEAs comply with the prevailing wage requirements.	No	2 CFR §§176.180, 176.190
Criterion 3.4	The SEA has procedures to ensure that it prevents and detects fraud, waste, and abuse.	No	Inspector General Act of 1987 (P.L. 100-504)

Finding: Criterion 3.1: During the AMI telephone interviews on November 4 and 14, 2011, the SEA reported that it did not certify and post certifications for infrastructure investments that were purchased with IDEA ARRA funds as required under ARRA section 1511.

Citation: Under ARRA section 1511, for covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, was required to certify that the infrastructure investment received the full review and vetting required by law and that the chief executive accepted responsibility that the infrastructure investment was an appropriate use of taxpayer dollars. Such certification was required to include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and had to be posted on a website and linked to the website established by ARRA section 1526 (See <http://www.recovery.gov>).

Further Action Required: In an email dated January 15, 2013, ADE provided the following Web link with the required certifications: http://recovery.arkansas.gov/ARRA_infrastructure_cert.html. No further action is required.

Monitoring Area 4, IDEA Part B: Level of Effort			
Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 4.1	The State has procedures to calculate its financial support for special education and related services for children with disabilities in accordance with the IDEA.	Yes	34 CFR §300.163(a)
Criterion 4.2	The SEA has procedures to ensure that each LEA budgets, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose in the most recent prior year for which information is available.	No	34 CFR §300.203(b)
Criterion 4.3	The SEA has procedures to ensure that each LEA expends at least the same amount as it expended in the immediate prior year for the education of children with disabilities, unless the LEA has allowable exceptions or adjustments.	No	34 CFR §§300.203(a), 300.204-300.205
Criterion 4.4	The SEA's procedures for reviewing LEA MOE consider each of the following ways to calculate MOE: total local funds; per capita local funds; total local and State funds; or per capita local and State funds. The SEA's procedures for reviewing LEA MOE find an LEA to have met MOE if the LEA met MOE based on one or more of those comparisons.	Yes	34 CFR §300.203(b)

Finding: Criterion 4.1: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that, at the time of the State MFS telephone interview, conducted on January 3, 2013, ADE did not have procedures for calculating State

MFS for special education and related services for children with disabilities that were consistent with the requirements of IDEA. Specifically, when performing the calculations, ADE included a percentage of Foundation Funding Aid (FFA). The FFA includes both State funds generated through State revenues and funds generated through State-mandated local tax levies to be used for the maintenance and operation of schools. In prior years, all uniform rate of tax (URT) revenue was remitted to the State Treasurer and then re-distributed to Arkansas school districts to equalize the amount of foundation-funding per student. The State reported that ADE and the Arkansas Attorney General's Office considered this revenue to be State revenue. However in a November 29, 2012 ruling, the Arkansas Supreme Court ruled that the URT was not a "State tax" but was in fact a "school-district tax," and thus any URT revenues are not State revenues. (McCleskey v. Kimbrell, 2012 Ark. 443 (2012).) Based on this decision, the inclusion of the URT revenues in the State MFS calculations is not consistent with IDEA. In addition, in calculating State MFS, ADE was using a full time equivalency (FTE) rate for special education teachers (2.9%) and applying this to FFA to determine the amount of funds made available from the FFA for the purposes of special education and related services. The use of the FTE is not a reasonable method for determining the percentage of the FFA that was being made available for special education and related services for children with disabilities and is not consistent with IDEA.

Citation: Under 34 CFR §300.163(a), a State must not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year. The State financial support provided by the SEA for special education and related services includes State funding for special education staff, the cost of monitoring and carrying out other State administrative duties related to special education, and the cost of any direct services provided by the SEA, as well as any State funds provided to public agencies (including LEAs) in the State for the purpose of providing special education and related services. See OSEP Memorandum 10-5, Maintenance of State Financial Support under the Individuals with Disabilities Education Act, December 2, 2009.

Further Action Required: In an email dated February 11, 2013, the State stated that the funds that the Supreme Court has re-designated as a "school-district tax" instead of a "State tax" would not be considered State revenue and would not be included in the amount of State financial support made available for SFYs 2011 and 2012 reported in Section V of its FFY 2013 IDEA Part B application. In addition, in a subsequent email dated March 2, 2013, the State further stated that it would include the full amount of the FFA, less the re-designated funds discussed above, in its MFS calculations. Finally, in a telephone interview conducted on December 18, 2013, ADE staff confirmed that the Section V data submitted by the State as part of its FFY 2013 IDEA Part B application reflected the changes detailed above. No further action is required.

Finding: Criterion 4.4: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that, at the time of the AMI telephone interviews conducted on November 4 and 11, 2011, when determining whether an LEA was eligible for a Part B IDEA subgrant and when determining whether the LEA was in compliance with the requirement to maintain effort in 34 CFR

§300.203, the State did not permit the LEA to demonstrate that it had met either the eligibility or compliance standard based on a comparison of local funds only on a total or per capita basis, consistent with 34 CFR §300.203(a) and (b)(1)(i)⁵.

Citation: Under 34 CFR §300.203(a), except as provided in 34 CFR §§300.204 and 300.205, funds provided to an LEA under Part B must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year. The regulation in 34 CFR §300.203 includes both a standard to be used as part of determining an LEA’s eligibility for an IDEA Part B subgrant (eligibility standard) and a separate standard for determining whether an LEA in fact spent as much local, or State and local, funds as required on the education of children with disabilities (compliance standard). The SEA must provide LEAs the opportunity to meet the eligibility and the compliance standard based on a comparison of: (1) State and local funds on a total basis; (2) State and local funds on a per capita basis; (3) local funds only on a total basis; or (4) local funds only on a per capita basis, consistent with 34 CFR §300.203(a) and (b)(1)(i).

Further Action Required: In an email dated December 18, 2013, the State provided documentation that it has revised its LEA MOE instructions and training materials in accordance with the requirements of 34 CFR §300.203, and confirmed that the new procedures were implemented in the 2012-2013 school year. No further action is required.

Monitoring Area 5, IDEA Part B: Procurement, Property, and Record Retention

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 5.1	The SEA obtains approval from the Department prior to using its State-level IDEA funds for equipment, construction, or alteration of facilities.	No	34 CFR §300.718

⁵ On April 28, 2015, the Department published final regulations on LEA MOE, which took effect on July 1, 2015. 80 Fed. Reg. 23644 (Apr. 28, 2015). In the final regulations, the eligibility standard precedes the compliance standard in order to provide clarity. Therefore, the eligibility standard is set out in 34 CFR §300.203(a), and the compliance standard is set out in 34 CFR §300.203(b). In addition, in order to clarify that LEAs may meet the eligibility standard and the compliance standard using any of the four methods ((i) local funds only, (ii) the combination of State and local funds, (iii) local funds only on a per capita basis, or (iv) the combination of State and local funds on a per capita basis), the final regulations list the four methods individually in both the eligibility standard in §300.203(a)(1) and the compliance standard in 34 CFR §300.203(b)(2). The ability to use any of the four methods is not a change in the final LEA MOE regulations, as the prior LEA MOE regulation also provided for the use of the four methods.

Criterion 5.2	The SEA has procedures to ensure that an LEA obtains its approval prior to using IDEA funds for equipment, construction, or alteration of facilities.	No	34 CFR §300.718
Criterion 5.3	The SEA has procedures to ensure that its procurement mechanisms, and those used by its LEAs, conform to applicable Federal law and State procurement rules.	No	34 CFR §80.36
Criterion 5.4	The SEA has procedures to ensure that each LEA maintains a physical inventory of property acquired with IDEA funds and conducts inventories to reconcile with property records at least once every two years.	No	34 CFR §80.32(d)(2)
Criterion 5.5	The SEA has procedures to ensure that it, and its LEAs, do not award or obligate funds to any party that has been debarred or suspended.	No	34 CFR §80.35
Criterion 5.6	The SEA has procedures to ensure it, and its LEAs, maintain financial and programmatic records for the period of time required by Federal law.	Yes	34 CFR §80.42

Finding: Criterion 5.6: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP determined the State did not have policies and procedures in place before March 2015 to ensure that the State maintains records demonstrating that it allocates the IDEA section 611 and section 619 subgrants to eligible LEAs, including new and significantly expanding charter schools that operate as LEAs, in accordance with the requirements in 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76. In telephone conversations with OSEP on June 3 and 27, 2014, ADE indicated that it did not keep proper records to demonstrate it was making appropriate section 611 and section 619 allocations to LEAs in previous fiscal years, and that therefore it is unable to determine whether any LEA received a base payment in previous years that was less than the amount it was entitled to receive under sections 611 and 619, and if so, the amount of such discrepancy. ADE also indicated that it does not have information indicating that any LEA, including new and significantly expanding charter school LEAs, actually received a base payment in previous fiscal years that was less than the amount it was entitled to receive under sections 611 and 619.

Citation: Under 34 CFR §76.731, SEAs and LEAs must keep records to show their compliance with program requirements. SEAs and LEAs are subject to the record retention requirements in 34 CFR §80.42⁶, under which records must generally be retained for three years from the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that

⁶ See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provision governing record retention requirements at 2 CFR §200.333 replaces the provision previously found at 34 CFR §80.42.

period. Under 34 CFR §76.709, if SEAs or LEAs do not obligate all of their IDEA Part B grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, they may obligate those funds during a carryover period of one additional year. Therefore, SEAs and LEAs must generally keep records to show compliance with IDEA programmatic requirements for a minimum of five years. SEAs and LEAs have the discretion to keep the records longer than the required retention period if necessary to meet State and local data retention requirements.

Further Action Required: Subsequently, on March 10, 2015, in response to the State’s FFY 2010, 2011, 2012 and 2013 single State audits, ADE submitted to OSEP its revised policies and procedures ensuring that the State will maintain records demonstrating that it allocates the IDEA section 611 and section 619 subgrants to eligible LEAs, including new and significantly expanding charter school LEAs, in accordance with 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76, in FFY 2015 and subsequent years. Within 90 days of receipt of this letter, the State must submit to OSEP:

1. Documentation that the State has notified its LEAs of the revised policies and procedures requiring the State and its LEAs to maintain financial and programmatic records, including records demonstrating that the State makes base payments under section 611 and section 619 of the IDEA, in accordance with 34 CFR §§300.705 and 300.816 and Subpart H of 34 CFR Part 76; and
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 Subpart F of the Uniform Guidance (former OMB Circular A-133), of this finding of noncompliance and OSEP’s required corrective actions.

Monitoring Area 6, IDEA Part B: Fiscal Monitoring			
Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 6.1	The SEA has a reasonably designed system to monitor subgrantees to ensure compliance with applicable Federal fiscal requirements.	Yes	34 CFR §§80.26, 80.40, 300.149, 300.600

Finding: During OSEP’s AMI telephone interview conducted on November 11, 2011, the State reported that it relied on A-133 audits as its sole mechanism to monitor its subgrantees, or LEAs, to ensure compliance with applicable Federal fiscal requirements, including the time and effort, procurement, physical inventory of property, debarment and suspension, and the financial and

programmatic record retention requirements, of Part B of the IDEA and EDGAR, as required under 34 CFR §§80.26(b)(2)⁷, 80.40(a), 300.149, and 300.600. Furthermore, the State reported that, for those LEAs that did not receive A-133 audits, the State has no mechanism in place to monitor those LEAs to ensure compliance with applicable Federal fiscal requirements, including those noted above, of Part B of the IDEA and EDGAR, as required under 34 CFR §80.26(b)(2). In an email dated January 13, 2013, ADE provided information on revisions to its monitoring protocol that included some limited fiscal components. Through this protocol, the State now monitors LEAs to ensure they comply with fiscal requirements related to the use of IDEA Part B funds for coordinated early intervening services (CEIS), proportionate share calculations, the purchase of equipment, and the use of IDEA Part B funds for specialized transportation. However, these new protocols include only a limited number of fiscal requirements and do not include any of the fiscal requirements discussed above, such as time and effort, procurement, physical inventory of property, debarment and suspension, and the financial and programmatic record retention requirements. Based on this information, OSEP has determined that the State does not have a system reasonably designed to ensure that LEAs comply with the fiscal requirements applicable to Part B of the IDEA, as required under 34 CFR §§80.26(b)(2), 80.40(a), 300.149, and 300.600.

Citation: Under 34 CFR §80.26(b)(2), the State must determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), OMB Circular A-133⁸, or through other means (e.g., program reviews) if the subgrantee has not had such an audit. In addition to the requirement in 34 CFR §80.26(b)(2), under 34 CFR §§80.40(a), 300.149, and 300.600, the State must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements, including fiscal requirements. 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.

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

1. Revised policies and procedures for fiscal monitoring consistent with the requirements of IDEA and the Uniform Guidance; and
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 Subpart F of the Uniform Guidance (former OMB Circular A-133), of this finding of noncompliance and OSEP's required corrective actions.

With the FFY 2014 APR, due February 1, 2016, the State must provide evidence that it has implemented the fiscal monitoring procedures.

⁷ See footnote 3. Effective July 1, 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.

⁸ See footnote 3.