

Office of Special Education Programs Fiscal Monitoring Instrument

Arizona 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 the Education Department General Administrative Regulations (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 local educational agency (LEA) maintenance of effort (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 1, 2015. Therefore, the "Finding" and "Citation" sections of the enclosure include citations to the provisions in the 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

Department – U.S. Department of Education

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.	Yes	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.	Yes	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 finds that the State does not have procedures to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with the IDEA. First, OSEP finds that while the State required some of the individual assurances, 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 as part of its determination that an LEA is eligible for a Part B IDEA subgrant. Specifically, the State did not require assurances for all of the conditions in 34 CFR §§300.201-300.211 and 300.213. Second, based on email correspondence provided

by the State on May 22, 2014 and November 26, 2014, and telephone interviews conducted with State personnel on October 22, 2014 and May 19, 2015, OSEP finds that the State does not have procedures in place to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with the required formula in 34 CFR §§300.705(a)-(b), 300.815 and 300.816, which consists of a base, population, and poverty payment. Specifically:

1. The SEA reported that it annually changes the total amount it uses for base payments and the amount of the base payment each LEA receives under section 611 and section 619. Generally, when distributing the base payment to LEAs under section 611 and section 619, the SEA assigns a per child dollar value by dividing the total amount of funds available for base payments by the total number of children with disabilities ages three through 21 for section 611, or ages three through five for section 619, in all LEAs. The SEA reported that it then multiplies this amount by the number of children in each LEA based on the child count data from December 1, 1998 for section 611 and December 1, 1996 for section 619. Based on the State's FFY 2014 allocation tables, this approach resulted in the SEA increasing the total amount available for base payments under section 611 and reducing the amount available for base payments under section 619, thereby resulting in adjusted base payment amounts for each LEA. This approach results in LEAs not receiving base payments, base payment adjustments, population, and poverty payments in accordance with the required formula for allocating section 611 and section 619 funds. As a result, LEAs may not have received the amount of section 611 and section 619 funds that they were entitled to under 34 CFR §§300.705(a)-(b), 300.815 and 300.816.
2. For LEAs that received a base payment of zero under section 611 and section 619 in their first year of operation, the SEA does not have a process in place to adjust the base payment for the first fiscal year after the first annual child count in which the LEAs report that they are serving children with disabilities.
3. Because the SEA does not have an application submission deadline, the SEA determines the amount of the section 611 and section 619 subgrants all LEAs operating in the State are entitled to receive for a fiscal year, regardless of whether or not they have submitted an approvable application by July 1 of each year. For LEAs that do not submit an approvable application during a Federal fiscal year, due to closure or a decision not to request Federal funds under Part B of the IDEA, the SEA places the funds that would have been allocated to those LEAs if they had submitted an approvable application into an account of carryover funds. The SEA adds the "carryover funds" to the funds available for allocation to all LEAs in the subsequent Federal fiscal year, instead of distributing those funds to the LEAs that established eligibility in the initial Federal fiscal year, as required under 34 CFR §§300.705(a) and 300.815; retaining those funds for use at the State level to the extent the State has not reserved the maximum amount it is permitted to reserve for State-level activities pursuant to 34 CFR §§300.704 and 300.812; or for LEAs that elect not to apply for IDEA Part B funds, using the payments that would have otherwise been available to such an LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA, as required by 34 CFR §300.227(a)(1)(i).

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. Under 34 CFR §§300.705(a) and 300.815, each State that receives a grant under section 611 or section 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 in the State that have established

their eligibility under section 613 of the IDEA. These funds must be distributed in accordance with the formula specified in 34 CFR §§300.705(b) and 300.816. Under 34 CFR §300.705(b)(1) and 300.816(a), the State first must award each LEA the amount the LEA would have received under section 611 for fiscal year 1999, or under section 619 for fiscal year 1997, if the State had distributed 75 percent of its grant for that year. Under 34 CFR §§300.705(b)(2) and 300.816(b), base payment adjustments must be made if one or more of the following conditions exist: 1) a new LEA is created; 2) one or more LEAs are combined into a single new LEA; 3) for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 21 change; or 4) an LEA received a base payment of zero in its first year of operation, and it reports in a subsequent year that it is now serving children with disabilities. If an LEA received a base payment of zero in its first year of operation, the SEA must adjust the base payment for the first fiscal year after the first annual child count in which the LEA reports that it is serving any children with disabilities. The State must divide the base allocation determined under 34 CFR §§300.705(b)(1) and 300.816(a) for the LEAs that would have been responsible for serving children with disabilities now being served by the LEA, among the LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21 under section 611 and ages three through five under section 619 currently provided special education by each of the LEAs. (34 CFR §§300.705(b)(2)(iv) and 300.816(b)(4)) In addition, the 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). 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.)¹ Under 34 CFR §300.227(a)(1)(i), an SEA must use the payments that would otherwise have been available to an LEA or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that LEA, or for whom that State agency is responsible, if the SEA determines that the LEA or State agency has not provided the information needed to establish the eligibility of the LEA or State agency, or elected not to apply for its Part B allotment, under Part B of the Act.

Further Action Required: Within 90 days of the receipt 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 it determines that an LEA is eligible for assistance under Part B of the IDEA for a fiscal year.
2. Documentation of the section 611 and section 619 allocation that each LEA was entitled to receive in FFY 2014, FFY 2015, and/or FFY 2016 and the amount of the section 611 and section 619 allocation each LEA actually received in FFY 2014, FFY 2015, and/or FFY 2016.

¹ 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>.)

3. For any LEA whose section 611 or section 619 allocation was less than the amount to which it was entitled in FFY 2014, FFY 2015, and/or FFY 2016, a calculation of the difference between the amount the LEA actually received and the amount of the allocation the LEA should have received.
4. 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 2014, FFY 2015, and/or FFY 2016 was made whole or a plan outlining how the State will make these LEAs whole during FFY 2016. The State may use any remaining FFY 2014 or FFY 2015 section 611 and/or section 619 State set-aside funds or any FFY 2016 section 611 and/or section 619 State set-aside funds that become available on July 1, 2016 for this purpose.
5. Revised State policies and procedures that demonstrate the SEA will allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with 34 CFR §§300.705(b) and 300.816.
6. Revised State policies and procedures that demonstrate the SEA will allocate FFY 2015 and subsequent years' section 611 and section 619 funds that the State originally set aside for LEAs that do not submit an approvable application during a Federal fiscal year in accordance with the allocation procedures under 34 CFR §§300.705(a) and 300.815 to the LEAs that established eligibility in the initial Federal fiscal year in accordance with the formula used in that fiscal year, or retain those funds for use at the State level to the extent the State has not reserved the maximum amount it is permitted to reserve for State-level activities pursuant to 34 CFR §§300.704 and 300.812, and for those LEAs that elect not to apply for IDEA Part B funds, use the payments that would have otherwise been available to such an LEA to provide special education and related services directly to children with disabilities residing in the area served by that LEA, as required by 34 CFR §300.227(a)(1)(i).
7. 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)², 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.

Finding: Criteria 1.1, 1.2 and 1.5: Based on the review of documents, analysis of data, email correspondence dated March 20, 2015, and a telephone interview conducted with State personnel on May 19, 2015, OSEP finds that the SEA's policy for shifting funds, when an LEA has not requested reimbursement for all of its Federal funds before another LEA requests reimbursement from a subsequent year's Federal funds, is not consistent with the requirements for allocating and reallocating funds to LEAs in 34 CFR §§300.705, 300.816 and 300.817. Specifically, the SEA's policy is that the SEA must draw down all of the States' oldest Federal IDEA Part B funds before it draws down Federal IDEA Part B funds from a subsequent year. As a result, IDEA Part B funds that are

² 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.

allocated to one LEA are drawn down to pay for IDEA Part B expenditures incurred by another LEA from a subsequent year's allocation. When the initial LEA requests to draw down the funds, the SEA draws down funds from subsequent year Federal funds to reimburse the LEA for its previous year expenditures.

Citation: Under 34 CFR §§300.705(a) and 300.815, each State that receives a grant under section 611 or section 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 in the State that have established their eligibility under section 613 of the IDEA. These funds must be distributed in accordance with the formula specified in 34 CFR §§300.705(b) and 300.816. Under 34 CFR §76.709(a), LEAs have 27 months to obligate the funds. Under 34 CFR §§300.705(c) and 300.817, in order to reallocate IDEA Part B funds, the SEA must first determine that an LEA is adequately providing FAPE to all children with disabilities residing in the area served by that LEA with State and local funds. Once this is determined, the SEA may reallocate any portion of the IDEA Part B funds that are not needed by that LEA to provide FAPE, to other LEAs in the State that are not adequately providing special education and related services to all children with disabilities residing in the areas served by those other LEAs. The SEA may also retain those funds for use at the State level to the extent the State has not reserved the maximum amount of funds it is permitted to reserve for State-level activities pursuant to 34 CFR §§300.704 and 300.812. Under 34 CFR §76.702, “[a] State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.” In addition, under 34 CFR §80.20(a)(2), fiscal control and accounting procedures of the State, as well as its subgrantees, must be sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.³ The SEA may not draw down funds that have been allocated to one LEA and use them to reimburse another LEA unless the SEA follows the reallocation process under 34 CFR §§300.705(c) and 300.817. The only permissible way to allow an LEA to use IDEA Part B funds allocated to another LEA is through the reallocation procedures in 34 CFR §§300.705(c) and 300.817.

Further Action Required: Within 90 days from the date of this letter, the State must develop and submit to OSEP policies and procedures that demonstrate the SEA will conduct any reallocations of IDEA Part B funds in accordance with the requirements in 34 CFR §§300.705(c) and 300.817. See also further action required under Criterion 1.1.

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.	No	34 CFR §§300.162(a), 300.202(a)(1)
Criterion 2.2	The SEA has procedures to ensure that LEAs use IDEA	Yes	34 CFR §§300.16,

³ See footnote 2. Effective July 1, 2015 for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provision governing financial management in 2 CFR §200.302 replaces the provision previously found in 34 CFR §80.20.

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
	funds only to pay the excess costs of providing special education and related services to children with disabilities in accordance with IDEA.		300.202(a)(2)
Criterion 2.3	The SEA has procedures to ensure that LEAs spend the required amount on providing special education and related services to parentally-placed private school children with disabilities.	No	34 CFR §300.133
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 2.5	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 2.6	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 2.2: During the telephone interviews conducted on March 18, 2014 and October 22, 2014, the State reported that its excess cost computations are inconsistent with requirements set forth in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. Specifically, the State’s procedures do not ensure that LEAs compute the excess costs separately for elementary school and secondary school students.

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 average annual per-student expenditure in an 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. As part of its general supervisory responsibilities under 34 CFR §§300.149 and 300.600, the SEA must ensure that each LEA computes excess costs in accordance with the requirements in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. Further guidance explaining this computation is available on the GRADS360 website at <https://osep.grads360.org/#program/fiscal>.

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

1. Revised State policies and procedures that demonstrate the SEA will ensure that LEAs comply with IDEA’s excess cost computation requirements, including computing the excess costs separately for elementary and secondary school students, as set forth in 34 CFR §300.16 and Appendix A to 34 CFR Part 300; 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.

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.

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.	No	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: None.

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 Number	Description	Noncompliance identified?	Applicable Requirement
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.	Yes	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: During the telephone interview conducted on March 27, 2015, and confirmed in email correspondence dated March 27, 2015, the State reported that its procedures for calculating the amount of State financial support made available for special education and related services had not included the full amount of funds made available for special education and related services in Arizona. Specifically, the State reported that, due to a calculation error, it had been subtracting the amount of local property tax levy funds generated by districts from the total amount of funds it reported as made available through the State's annual appropriation. The local tax levy funds neither were nor should have been included in the amounts made available by the State for special education and related services. As a result, the reported amounts made available were lower than the amount of State financial support actually made available for special education and related services. The State self-identified this calculation error and confirmed with OSEP that the local property tax levy amounts should not be factored into the State MFS calculation.

Citation: Under 34 CFR §300.163(a), the 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 reference to "State financial support" in 34 CFR §300.163 includes the State financial support provided to or through the SEA, as well as the financial support of all State agencies that provide or pay for special education and related services, as those terms are defined under the IDEA, to children with disabilities. See OSEP Memorandum 10-5, Maintenance of State Financial Support under the Individuals with Disabilities Education Act, December 2, 2009 at <http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>.

Further Action Required: Subsequently, in the March 27, 2015 email correspondence, the State provided documentation that demonstrates the State corrected the identified noncompliance. In addition, in email correspondence dated May 8, 2015, the State provided a revised version of Section V of its FFY 2014 IDEA Part B application to reflect this correction.

Finding: Criterion 4.3: Based on the review of documents, analysis of data, email correspondence from the State on May 22, 2014, and interviews with State personnel conducted on March 18, 2014, OSEP finds that the SEA does not have policies that are consistent with the requirements in 34 CFR §300.204(a). Specifically, the SEA's written policies allow LEAs to take the LEA MOE reduction in 34 CFR §300.204(a) based on the departure of special education or related services personnel only if they replace the departing personnel with qualified, lower-salaried personnel.

Citation: Under 34 CFR §300.203(a),⁴ 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. Under 34 CFR §300.204, an LEA may reduce the level of expenditures by the LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the exceptions in 34 CFR §300.204(a) through (e). Under 34 CFR §300.204(a), the LEA may reduce the level of expenditures if the reduction is attributable to the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel. The LEA is not required to replace the personnel with qualified, lower-salaried personnel to take the reduction to LEA MOE.

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

1. Revised State policies that are consistent with the allowable exception under 34 CFR §300.204(a).
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.

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

Finding: Criterion 4.4: During the fiscal monitoring telephone interview conducted with State personnel on March 18, 2014, the SEA reported that, when determining whether an LEA is eligible for a Part B IDEA subgrant and when determining whether the LEA is in

⁴ 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 §300.203(a), and the compliance standard is set out in §300.203(b). The final regulations clarify that an LEA meets the compliance standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from local or State and local funds, on a total or per capita basis, below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205. Under both the prior and new LEA MOE regulations, States must ensure LEAs are in compliance with the requirement to maintain effort.

compliance with the requirement to maintain effort in 34 CFR §300.203, the State does not permit the LEA to demonstrate that it has 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) and (b)(1)(i), 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: Within 90 days of the date of this letter, the State must submit to OSEP:

1. Revised State policies and procedures that demonstrate the SEA will permit LEAs to demonstrate that they meet their MOE obligation (both eligibility and compliance) based on a comparison of local funds only, on a total or per capita basis, consistent with 34 CFR §300.203(a)(1)(i), (a)(1)(iii), (b)(2)(i) and (b)(2)(iii);
2. An assurance that the State will not take any recovery actions against an LEA, or deny an LEA eligibility for IDEA funds, due to an LEA's failure to maintain effort as required by 34 CFR §300.203, unless the LEA was provided an opportunity to demonstrate that it met its MOE obligation based on a comparison of local funds only on a total or per capita basis; and
3. 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.

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.

⁵ See footnote 4 regarding new LEA MOE regulations. 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 LEA MOE regulations list the four methods individually in both the eligibility standard in §300.203(a)(1) and the compliance standard in §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

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.	Yes	34 CFR §300.718
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.	No	34 CFR §80.42

Finding: Criterion 5.1: During the fiscal monitoring telephone interview conducted with State personnel on March 18, 2014, the SEA reported that it did not have a process in place to obtain approval from the Department prior to using its State-level IDEA Part B funds for equipment, construction, or alteration of facilities, and had used its State-level IDEA Part B funds for alteration of facilities without obtaining such approval.

Citation: Under 34 CFR §300.718, if the Secretary determines that a program authorized under Part B of the Act will be improved by permitting funds provided to the SEA under Part B to be used to acquire appropriate equipment,⁶ or to construct new facilities or alter existing facilities, the Secretary may allow the use of Part B funds for those purposes. Therefore, the State must seek prior approval from the Secretary before using IDEA Part B State-level funds for these purposes.

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

1. Revised State policies and procedures that demonstrate the SEA will obtain approval from the Department prior to using its State-level IDEA Part B funds for equipment, construction, or alteration of facilities, consistent with 34 CFR §300.718;⁷ 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.	No	34 CFR §§80.26, 80.40, 300.149, 300.600

Finding: None.

⁶ 2 CFR §200.33 defines equipment as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See also §§200.12 Capital assets, 200.20 Computing devices, 200.48 General purpose equipment, 200.58 Information technology systems, 200.89 Special purpose equipment, and 200.94 Supplies.

⁷ OSEP notes that subsequent to the March 18, 2014 interview with State personnel, ADE submitted requests for approval under 34 CFR §300.718, which are currently under review by the Department. OSEP appreciates ADE’s attention to this matter.