

# Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

California Department of Education (CDE)

## Scope of Review:

The Office of Special Education Programs (OSEP) monitored PRDE'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 Requirements (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 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**

| <b>Monitoring Area 1, IDEA Part B: Obligation/Liquidation</b> |   |                                  |   |
|---|---|----------------------------------|---|
| <b>Criterion Number</b>                                       | <b>Description</b>  | <b>Noncompliance identified?</b> | <b>Applicable Requirements</b>                    |
| <b>Criterion 1.1</b>  | The SEA has procedures to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs based upon the correct formula.  | No                               | 34 CFR §§300.200, 300.705(a)-(b), 300.815-300.816 |
| <b>Criterion 1.2</b>  | The SEA has procedures to ensure that LEAs are provided 27 months to obligate funds.  | No                               | 34 CFR §76.709(a)                                 |
| <b>Criterion 1.3</b>  | 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                    |
| <b>Criterion 1.4</b>  | 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                            |
| <b>Criterion 1.5</b>  | 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                      |
| <b>Criterion 1.6</b>  | 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:** None

## 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 funds only to pay the excess costs of providing special education and related services to children with disabilities in accordance with IDEA. | No                        | 34 CFR §§300.16, 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:** None

## 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               |
|----------------------|--|---------------------------|--------------------------------------|
| <b>Criterion 4.1</b> | 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)                   |
| <b>Criterion 4.2</b> | 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 <sup>1</sup>           | 34 CFR §300.203(b)                   |
| <b>Criterion 4.3</b> | 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 |
| <b>Criterion 4.4</b> | 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. | No                        | 34 CFR §300.203(b)                   |

<sup>1</sup> On July 25, 2013, the Department's Office of the Inspector General (OIG), issued a report entitled "Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds Final Audit Report" (ED OIG/A09-L0011). As a result of the OIG audit, the Office of Special Education and Rehabilitative Services (OSERS) issued a program determination letter (PDL) on July 24, 2015, requiring the State to take the following corrective actions: 1) submit to OSERS information demonstrating that the State has implemented appropriate monitoring controls to ensure that "freed-up" funds are used for activities that could be supported with funds under the Elementary and Secondary Education Act (ESEA), as required by 34 CFR §§300.149 and 300.600, in the event that LEAs exercise MOE flexibility under 34 CFR §300.205; 2) provide OSERS with documentation demonstrating the corrective actions taken by one school district that used MOE flexibility and reduced local special education spending in fiscal year (FY) 2009-2010 by more than the amount allowed; and 3) provide OSERS with documentation demonstrating the corrective actions implemented by one school district that spent funds for voluntary Coordinated Early Intervening Services (CEIS) in an amount that exceeded the maximum available in FY 2009-2010. The State submitted the requested information to OSEP on October 22, 2015, and OSEP is addressing these issues under separate cover.

**Finding:** Criterion 4.1: In a verification visit letter and enclosure dated February 7, 2011, OSEP found that California does not have procedures that are reasonably designed to properly calculate the State's financial support for special education and related services. Additionally, during the AMI telephone interview conducted on January 31, 2012, and December 11, 2012; and during additional calls, the State reported that it does not have procedures that are reasonably designed to properly calculate the amount of State financial support made available, including the amounts made available by State agencies other than the SEA for special education and related services. In addition, in Section V of its Part B IDEA applications for FFY 2013, FFY 2014, and FFY 2015 grant awards, California stated that "[a]t this time, the California Department of Education (CDE) has not calculated the final state special education apportionments... [T]he amounts below for the Maintenance of State Financial Support... are preliminary and based upon the [most current] certified special education appropriation amounts." In a June 3, 2014 letter, OSEP required California to provide: (1) an updated Section V of its FFY 2013 and FFY 2014 IDEA Part B applications, with final data and supporting documentation; or (2) an explanation of the steps it has taken to calculate the final State special education apportionments for SFYs 2011, 2012, and 2013, and why it is unable to secure those numbers, and the steps it has taken to obtain information from the California Children's Services and why it has been unable to secure this information. In an August 28, 2014 email submitted in response to OSEP's June 3, 2014 letter, CDE explained that: 1) "[t]he CDE has not finalized the state financial support calculations for California's state fiscal year 2012-13, which corresponds with federal SFY 2013. After a fiscal year ends in accordance with the AB 602 Principal Apportionment formula, AB 602 funds continue to recalculate three more times to reflect ADA and local revenue changes. For example, for FY 2012-13, the final amount of AB 602 funds will be identifiable on June 30, 2015."; and 2) "the CDE has not included the above CCS MTP [California Children's Services Medical Therapy Program] allocations on the State Financial Support Worksheet because the CCS MTP fiscal data collection does not currently gather the costs of services for students with IEPs that are educationally necessary. Of the allocations above, the DHCS [Department of Health Care Services] cannot provide CDE with the amount that is allocated for therapy services that are educationally necessary for students with IEPs." Accordingly, CDE does not include, in its calculation of State financial support, all State funds made available by all State agencies that provide or pay for special education and related services.

**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 is not limited to the State financial support provided to or through the SEA, but encompasses 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.](#)

**Further Action Required:** In a PDL dated September 11, 2015, related to the State's FYs' 2013 and 2014 single State audits, OSERS found that the State does not have sufficient procedures to accurately calculate its level of State financial support for special education and related services for children with disabilities. In that PDL, OSERS required the State to provide, within 60 days of the date of the PDL, revised policies and procedures for calculating State MFS that are consistent with the requirements in 20 U.S.C. § 1412(a)(18)(A), 34 CFR §300.163(a), and guidance provided by OSERS, and to submit an updated Section V of its Part B IDEA

applications for FFY 2013, FFY 2014 and FFY 2015 grant awards, with final documentation that supports the data, certified by a State Budget Officer or Authorized Representative, consistent with the revised procedures. On December 9, 2015, CDE submitted its response to the PDL, stating that it “has solicited assistance from the Center for IDEA Fiscal Reporting (CIFR) to facilitate discussions leading to a mutually agreeable methodology [for calculating State MFS] for California” and “is seeking to meet with CIFR to provide background information regarding CDE’s SMFS [State MFS] calculations and to discuss OSERS’ financial support data requirements in January 2016.” OSERS is addressing this issue under separate cover. Because this matter is being addressed through the audit resolution process, no additional actions are required at this time.

## 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        |
| 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          |

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

| Criterion Number | Description  | Noncompliance identified? | Applicable Requirement |
|------------------|--|---------------------------|------------------------|
| 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:** None

## 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