

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

Delaware Department of Education (DDOE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored DDOE'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 Circular A-133 and Office of Inspector General audits, and conducted both on-site and telephone interviews with State staff.

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.	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, email correspondence from April 7, 2014, and interviews with State personnel on April 8, 2014, 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, 300.202, 300.204-300.209, 300.212, and 300.213.

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

Further Action Required: Within 60 days from the date of this letter, the State must develop and submit to OSEP 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 and is therefore eligible for assistance under Part B of the IDEA for a fiscal year.

Finding: Criterion 1.2: Based on the review of documents, analysis of data, email correspondence from April 7, 2014, and interviews with State personnel on April 8, 2014, OSEP finds that the SEA allows LEAs only 26 months to obligate IDEA Part B funds, which is inconsistent with the requirements of section 421(b) of the GEPA and its implementing regulation in 34 CFR §76.709 of EDGAR.

Citation: IDEA Part B grants are “forward funded,” meaning that a portion of the IDEA funds are made available three months prior to the start of the Federal fiscal year (i.e., on July 1) and the remainder of the funds are made available on October 1. Under 34 CFR §76.709(a), which implements section 421(b) of GEPA, known as the Tydings Amendment, if a State or a subgrantee does not obligate all of its grant or subgrant funds by the end of the fiscal year for which Congress appropriated the funds, it may obligate the funds during a carryover period of one additional fiscal year. See 20 U.S.C. §1225(b)(1). Section 76.709(b) of EDGAR requires the State to return to the Federal government any carryover funds not obligated by the State or its subgrantees at the conclusion of the carryover period. Therefore, funds under Part B of the IDEA are available for obligation by the State and its subgrantees from either July 1 or October 1 through September 30 of the fiscal year following the fiscal year in which Congress appropriated the funds. Through the combination of forward funding and the Tydings Amendment, SEAs and LEAs have 27 months to obligate the IDEA Part B funds that become available on July 1 and 24 months to obligate the IDEA Part B funds that become available on October 1. Nothing in the IDEA Part B or EDGAR regulations prohibits an SEA from contacting an LEA a reasonable time before the end of the carryover period to consult with the LEA to assess its needs and to determine if the LEA will be able to obligate its remaining IDEA Part B funds. This contact could give the State sufficient time to reallocate any unobligated funds or use those funds at the State level if the State has not reserved the maximum amount of funds for State-level activities in accordance with 34 CFR §§300.705(c) and 300.817. However, the State must allow the LEA to obligate IDEA Part B funds during the entire Tydings period.

Further Action Required: Within 60 days of the date of this letter, the State must submit to OSEP:

1. Revised State policies and procedures that demonstrate the SEA will allow LEAs the full 27 months to obligate IDEA Part B funds specified under section 421(b) of GEPA and 34 CFR §76.709; 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 Office of Management and Budget (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.

Finding: Criterion 1.5: Based on the review of documents, analysis of data, email correspondence from April 7, 2014, and interviews with State personnel on April 8, 2014, OSEP finds that the SEA's policy for reallocating funds when an LEA does not expend the full amount of its IDEA Part B subgrant is not consistent with the requirements in 34 CFR §§300.705(c) and 300.817. Specifically, the SEA's policy is that the SEA will reallocate the funds based on population and poverty within its LEAs under 34 CFR §300.705(b)(3). The SEA's policy does not require the SEA to determine whether the LEA that did not fully expend the funds was adequately providing free appropriate public education (FAPE) to all children with disabilities residing in the area served by that agency with State and local funds, or whether the LEAs that received the reallocation were adequately providing special education and related services to all children with disabilities residing in the areas served by those LEAs.

Citation: 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.

Further Action Required: Within 60 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.

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.	Yes	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	No	34 CFR §300.133

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
	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 2.5	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.	N/A ¹	34 CFR §§76.799, 300.209(b)

Finding: Criterion 2.2: Based on the review of documents, analysis of data, email correspondence from April 7, 2014, and interviews with State personnel on April 8, 2014, OSEP finds that the State does not have procedures to ensure that LEAs use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities in accordance with the requirements in 34 CFR §300.202(a)(2) and (b) and compute excess costs in accordance with the requirements in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. For example, the State's procedures for computing excess costs do not ensure that LEAs use the average annual per student expenditure to determine the minimum amount of funds the LEA must spend for the education of children with disabilities before using Part B funds. In addition, the State's procedures permit LEAs to reduce the amount of State and local funds they are required to spend for the education of elementary school or secondary students to meet the excess cost requirement based on exceptions.

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-resources>.

Further Action Required: Within 60 days of the date of this letter, the State must submit to OSEP:

¹ As reported by the State, there are no charter schools that are part of LEAs in Delaware. All charter schools in the State are LEA charter schools.

1. Revised State policies and procedures that demonstrate the SEA will ensure that LEAs comply with IDEA’s excess cost computation requirements, as set forth in 34 CFR §300.16, and Appendix A to 34 CFR Part 300;² 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 Office of Management and Budget (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
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² OSEP appreciates the State’s continuing efforts to resolve this finding. OSEP notes that the State has provided draft procedures and continues to work with OSEP to ensure that the revisions being made to their policies and procedures are consistent with the requirements.

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.	Yes	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.	No	34 CFR §300.203(b)

Finding: Criterion 4.1: In an email dated March 6, 2013, the State reported that it did not have procedures that include the amount of State financial support from State agencies other than the SEA made available 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: Subsequently, on September 11, 2013, the State provided revised procedures that demonstrate the State corrected the identified noncompliance. No further action is required.

Finding: Criteria 4.2 and 4.3: Based on the review of documents, analysis of data, email correspondence from April 7, 2014, and interviews with State personnel on April 8, 2014, OSEP finds that the State is not ensuring that as part of its determination that an LEA is eligible for a Part B IDEA subgrant, that each LEA had met the eligibility standard for maintenance of effort (MOE), as

provided in 34 CFR §300.203(b). The State also reported that it was not ensuring, as part of its determination whether an LEA is in compliance with the requirements to maintain effort in 34 CFR §§300.203 through 300.205, that each LEA expends at least the same amount as it expended in a prior year for the education of children with disabilities, unless the LEA has any allowable exceptions or an adjustment. Specifically, the State's procedures for ensuring LEAs meet MOE include a combination of the LEA MOE requirements under the IDEA and the Elementary and Secondary Education Act. In addition, the procedures do not allow LEAs to exercise the adjustment to fiscal effort permitted in certain fiscal years under 34 CFR §300.205.

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). Under the eligibility standard in 34 CFR §300.203(b)(1), the SEA must determine that an LEA has budgeted, for the education of children with disabilities, at least the same total or per capita amount of local, or State and local, funds as it spent for that purpose from the same source during the most recent prior year for which there is information available. Under 34 CFR §300.203(b)(2), if an LEA relies on local funds only to meet the eligibility standard, the LEA must budget for the education of children with disabilities at least the same total or per capita amount of local funds as it spent for that purpose in the most recent fiscal year for which information is available and for which the LEA met the MOE compliance standard based on local funds only. Under the compliance standard in 34 CFR §300.203, an SEA must determine that an LEA spends, for the education of children with disabilities, at least the same total or per capita amount of local, or State and local, funds as it spent for that purpose from the same source in the preceding fiscal year, except as provided in 34 CFR §§300.204 and 300.205. If an LEA relies on local funds only to meet the compliance standard, the LEA must spend, for the education of children with disabilities, at least the same total or per capita amount of local funds as it spent for that purpose in the most recent fiscal year for which information is available and for which the LEA met the MOE compliance standard based on local funds only, consistent with 34 CFR §300.203(b)(2).

Further Action Required: Within 60 days of the date of this letter, the State must submit to OSEP:

- 1) Revised State policies and procedures that demonstrate that the State's computations are consistent with the requirements set forth in 34 CFR §§300.203-300.205;³
- 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 Office of Management and Budget (OMB) Circular A-133, of this finding of noncompliance and OSEP's required corrective actions.

³ OSEP appreciates the State's continuing efforts to resolve this finding. OSEP notes that the State has provided draft procedures and continues to work with OSEP to ensure that the revisions being made to their policies and procedures are consistent with the requirements.

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 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
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.