

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

Kentucky Department of Education (KDE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored KDE'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.	No	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: 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 Number	Description	Noncompliance identified?	Applicable Requirement
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 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.	No	34 CFR §300.203(b)

Finding: Criterion 4.1: During the AMI telephone interview conducted on October 20, 2011, the State reported that it did not have procedures consistent with the IDEA in place to calculate the amount of State financial support for special education and related services for children with disabilities. KDE explained that it used expenditure data, rather than data on the amount of State financial support made available. In addition, KDE reported that it was not including any State financial support (either expenditure or

amounts made available) from State agencies other than the SEA for special education and related services. On September 9, 2013, the State provided documentation of its revised procedures and an assurance that the data submitted in Section V of the State's FFY 2013 State Application under Part B of IDEA were consistent with 34 CFR §300.163(a). Based on this submission, OSEP has concluded that KDE is now providing data on the amount of State financial support made available for special education and related services by the SEA. However, in a call conducted on April 30, 2014, KDE explained that it is having difficulty collecting complete and accurate data from other State agencies for the FFY 2014 State Application, and that it was no longer confident that the data provided in its FFY 2013 State Application were complete.

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: Within 90 days from the date of this letter, the State must submit to OSEP:

1. Procedures and documentation demonstrating that its calculations of State financial support for special education and related services include State financial support made available for special education and related services by all applicable State agencies as required by IDEA;
2. Either an assurance that the data submitted in Section V of the State's FFYs 2013 and 2014 State Applications under Part B of IDEA included all funds made available by State agencies other than the SEA for special education and related services, as required under 34 CFR §300.163(a); or revised data for one or both State Applications, as applicable, certified by the State Budget Officer or his/her authorized representative, including the amount of State financial support from State agencies other than the SEA made available for special education and related services, as required under 34 CFR §300.163(a); 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 Office of Management and Budget (OMB) Circular A-133, of this finding of noncompliance and OSEP's required corrective actions.

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

Criterion Number		Noncompliance identified?	Applicable Requirement
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Criterion Number		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.	Yes	34 CFR §§80.26, 80.40, 300.149, 300.600

Finding: Criterion 6.1: During the AMI telephone interviews conducted on October 20, 2011, a follow up call conducted on January 13, 2014, and in an email dated January 21, 2014, the State reported that it relies 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), 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). Finally, based on a review of documents, analysis of data, and interviews with State personnel, OSEP finds that KDE also has no mechanism to ensure the State issues management decisions on audit findings within six months after receipt of the LEA's audit report; and no mechanism to ensure that the LEA takes timely and appropriate corrective action on audit findings. 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 and OMB Circular A-133, Subpart D, § __.400(d)(5).

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-133, or through other means (e.g., program reviews) if the subgrantee has not had such an audit. If an LEA has received an A-133 audit, the State must issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure the subrecipient takes appropriate and timely corrective action. (OMB Circular A-133, Subpart D, § __.400(d)(5)). 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. Policies and procedures for fiscal monitoring consistent with the requirements of IDEA, EDGAR, the Single Audit Act Amendments of 1996, and OMB Circular A-133; 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 OMB Circular A-133, of this finding of noncompliance and OSEP's required corrective actions.

With the FFY 2013 APR, due February 1, 2015, the State must provide evidence that it has implemented the fiscal monitoring procedures.