

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

## New Hampshire Department of Education (NHDOE)

### Scope of Review:

The Office of Special Education Programs (OSEP) monitored NHDOE'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 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 local educational agency (LEA) maintenance of effort (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 EDGAR in 34 CFR Parts 74 and 80, prior OMB Circulars A-87 and A-133, and the LEA MOE regulations in effect prior to July 1, 2015. However, because the "Further Action Required" section of the enclosure addresses corrective actions the LEA must take after July 1, 2015, that section includes citations to the Uniform Guidance and the revised LEA MOE regulations.

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

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

CrEAG – Critical Elements Analysis Guide

EDGAR – Education Department General Administrative Regulations

FFY – Federal Fiscal Year

FS – fiscal systems element of the CrEAG

GEPA – General Education Provisions Act

LEA – local educational agency

MFS – maintenance of financial support

SEA – State educational agency

**IDEA Part B  
Summary of Monitoring Criterion**

**Monitoring Area 1, IDEA Part B: Obligation/Liquidation**

<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.	Yes	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.	Yes	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:** Criterion 1.1: Based on the review of documents, analysis of data, and interviews with State personnel on March 4, 2014, 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, NHDOE does not 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 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, 300.204-300.207, and 300.213. Second, the State does not have procedures in place to allocate the IDEA section 619 subgrants to eligible

LEAs in accordance with the required formula in 34 CFR §300.816. Specifically, OSEP finds that incorrect data was used in determining the amount of the base payment LEAs are entitled to receive under 34 CFR §300.816(a). NHDOE was required to allocate a base amount to each of its LEAs based on the amount the LEA would have received under section 619 of the IDEA for fiscal year 1997 if the State had distributed 75% of its grant for that year under section 619(c)(3), as such section was then effect. In order to determine that amount, the State was required to use its December 1, 1996 child count data; instead NHDOE utilized its December 1, 1995 child count data. As a result, LEAs may not have received the amount of section 619 Preschool Grant funds that they were entitled to under 34 CFR §300.816.

**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 §300.816, each State must distribute funds to eligible LEAs in accordance with the three-part formula in 34 CFR §300.816. The formula consists of a base, population, and poverty payment. Under 34 CFR §300.816(a), the State must first award each LEA a base payment that consists of the amount of section 619 funds the LEA would have received in FFY 1997 if the State had distributed 75% of its funds to LEAs. The amount the LEA would have received in FFY 1997 is based on the State's December 1, 1996 child count. The regulations in 34 CFR §300.816(b) specify the limited circumstances when base payment adjustments must be made.

**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 amount of the base payment that each LEA was entitled to receive in FFY 2014 and FFY 2015 (based on the State's December 1, 1996 child count) and the amount of the base payment each LEA actually received in FFY 2014 and FFY 2015 (based on the State's December 1, 1995 child count).
3. For any LEA whose base payment was less than the amount to which it was entitled in FFY 2014 and/or FFY 2015, a calculation of the difference between the amount the LEA actually received (based on the December 1, 1995 child count data) and the amount of the base payment the LEA should have received based on the correct child count data (the December 1, 1996 child count data).
4. Documentation demonstrating that any LEA that received a base payment in FFY 2014 and/or FFY 2015 that was less than the amount of section 619 funds to which it was entitled was made whole or a plan outlining how the State will make these LEAs whole during FFY 2015. The State may use any remaining FFY 2014 or FFY 2015 section 619 and/or section 611 State set-aside funds for this purpose.

5. Revised State policies and procedures that demonstrate the SEA will allocate the IDEA section 619 subgrants to eligible LEAs in accordance with the base payment provision in 34 CFR §300.816(a) in FFY 2016 and subsequent years.
6. 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 Office of Management and Budget (OMB) Circular A-133)<sup>1</sup>, 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 1.2: Based on the review of documents, analysis of data, and interviews with State personnel on June 24, 2014, OSEP finds that the State's written procedures do not allow LEAs 27 months to obligate IDEA Part B funds and are therefore 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 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

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<sup>1</sup> 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.

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 2, IDEA Part B: Use of Funds

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
<b>Criterion 2.1</b>	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)
<b>Criterion 2.2</b>	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)
<b>Criterion 2.3</b>	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
<b>Criterion 2.4</b>	The SEA has procedures to provide an approved restricted indirect cost rate (RICR) for its LEAs.	No	34 CFR §§76.560-76.569
<b>Criterion 2.5</b>	The SEA has procedures to provide IDEA funds to LEA charter schools in accordance with IDEA and EDGAR.	N/A <sup>2</sup>	34 CFR §§76.788-76.797, 300.209(c), 300.705(a)-(b), 300.815-300.816
<b>Criterion 2.6</b>	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)

<sup>2</sup> As reported by the State, there are no LEA charter schools in New Hampshire. All charter schools in the State are part of an LEA.

**Finding:** Criterion 2.2: Based on the review of documents, analysis of data, email correspondence from May 5, 2014, and interviews with State personnel, OSEP finds that the State does not have procedures to ensure that LEAs compute excess costs in accordance with the requirements in 34 CFR §300.16 and Appendix A to 34 CFR Part 300.

**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: (1) provides an assurance to the SEA, as part of its application for Part B funds, that it will use IDEA Part B funds only to pay the excess costs of providing special education and related services to children with disabilities, as required by 34 CFR §§300.200 and 300.202(a)(2) and (b), and (2) 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. Revised State policies and procedures that demonstrate the SEA will ensure that LEAs comply with the excess cost requirements in 34 CFR §§300.16, 300.202(a)(2) and (b), 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 Number	Description	Noncompliance identified?	Applicable Requirement
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.	No	34 CFR §300.163(a)
Criterion 4.2	The SEA has procedures to ensure that each LEA budgets, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose in the most recent prior year for which information is available.	No	34 CFR §300.203(b)
Criterion 4.3	The SEA has procedures to ensure that each LEA expends at least the same amount as it expended in the immediate prior year for the education of children with disabilities, unless the LEA has allowable exceptions or adjustments.	No	34 CFR §§300.203(a), 300.204-300.205
Criterion 4.4	The SEA's procedures for reviewing LEA MOE consider each of the following ways to calculate MOE: total local funds; per capita local funds; total local and State funds; or per capita local and State funds. The SEA's procedures for reviewing LEA MOE find an LEA to have met MOE if the LEA met MOE based on one or more of those comparisons.	Yes	34 CFR §300.203(b)

**Finding:** Criterion 4.4: Based on the review of documents, analysis of data, and interviews with State personnel on December 19, 2013, OSEP finds that when determining whether an LEA was eligible for a Part B IDEA subgrant and when determining whether the LEA was in compliance with the requirement to maintain effort in 34 CFR §300.203, the State did not permit the LEA to demonstrate that it has met either 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).

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

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<sup>3</sup> 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). In order to clarify that LEAs may meet the eligibility standard and the compliance standard using any of the four methods ((i) local funds only, (ii) the combination of State and local funds, (iii) local funds only on a per capita basis, or (iv) the combination of State and local funds on a per capita basis), the final regulations list the four methods individually in both the eligibility standard in §300.203(a)(1) and the compliance standard in §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.	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.