

Office of Special Education Programs

Fiscal Monitoring Instrument

New Jersey Department of Education (NJDOE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored NJDOE'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.	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: Criterion 1.1: Based on the review of documents, analysis of data, and interviews with State personnel on February 16, 2016 and March 18, 2016, 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 an IDEA Part B subgrant. Specifically, the State did not require assurances for all of the conditions in 34 CFR §§300.204-300.206, 300.208, and

300.211-300.213. Second, 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 34 CFR §§300.705(a) and 300.815. Specifically, when the State does not expend all of the funds it has reserved for State-level activities under 34 CFR §§300.704 and/or 300.812 by the end of the initial fiscal year, the funds are added to the funds available for allocation to all LEAs in the subsequent Federal fiscal year, instead of being distributed to the LEAs that established eligibility in the initial Federal fiscal year as required under 34 CFR §§300.705(a) and 300.815.

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 §§300.201-300.213. 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.

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

1. Revised 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 §§300.201-300.213 before it determines that an LEA is eligible for assistance under Part B of the IDEA for a fiscal year;¹
2. Revised State policies and procedures that demonstrate that, if the State chooses to allocate any FFY 2015 and subsequent years' section 611 and/or section 619 funds it initially reserved for State-level activities pursuant to 34 CFR §§300.704 and/or 300.812, the State will allocate those funds to the LEAs that established eligibility in the initial Federal fiscal year in accordance with the formula used in that fiscal year, consistent with 34 CFR §§300.705 and 300.815-300.816; 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)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.

¹ 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.

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.

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 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 ³	34 CFR §§76.799, 300.209(b)

Finding: Criterion 2.2: Based on the review of documents, analysis of data, and interviews with State personnel on January 13, 2015, February 16, 2016, and March 18, 2016, 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. Specifically, when calculating the annual per student expenditure (APPE), the State's procedures do not require or permit LEAs to subtract from the total expenditures for elementary (or secondary) students the State and local expenditures for children with disabilities, or State or local expenditures for programs under ESEA, Title I, Part A, and Title III, Parts A and B, as required in 34 CFR §300.16 and Step b of Appendix A. In addition, the State's procedures require the LEA to divide the amount computed under Step b of Appendix A by the average number of students enrolled in the LEA's elementary schools or secondary schools during the current year, instead of the

³ As reported by the State, there are no charter schools that are part of LEAs in New Jersey. All charter schools in the State are LEA charter schools.

average number of students enrolled during the *preceding* year, as required in Step c of Appendix A. Finally, the State’s procedures require the LEA to use the preceding year’s expenditures for the education of its elementary (or secondary) children with disabilities, instead of the current year’s expenditures for the education of its elementary (or secondary) children with disabilities, to demonstrate that the LEA has spent at least the minimum average amount for the education of its children with disabilities before Part B funds are used to pay the excess costs of providing special education and related services.

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 the LEA 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 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 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.	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.	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: During an interview with State personnel on February 16, 2016, the State reported that it does not have procedures that include the amount of State financial support made available by all State agencies other than the SEA for special education and related services. On September 22, 2011, NJDOE submitted an MFS waiver request for State fiscal year (SFY) 2011.

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 at <http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>.

Further Action Required: The State submitted information, including in its September 22, 2011, request for a waiver of the State MFS requirement for SFY 2011 under 34 CFR §300.163, indicating that the State may have failed to meet the State MFS requirement in SFY 2011. OSEP will address this finding under separate cover in response to the State's waiver request.

Finding: Criterion 4.3: Based on the review of documents, analysis of data, and an interview with State personnel on February 16, 2016, OSEP finds that the SEA does not have procedures to ensure that LEAs have met the MOE compliance standard, as provided in 34 CFR §300.203(a) and (b).

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 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 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 each LEA expends at least the same amount of local, or State and local, funds, on a total or per capita basis, for the education of children with disabilities as it expended for that purpose from the same source during the preceding fiscal year (after taking into consideration the exceptions or adjustment in 34 CFR §§300.204 and 300.205, consistent with 34 CFR §300.203(b);⁴ and

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

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 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

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.

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