

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

**New Mexico Public Education Department (NMPED)**

## **Scope of Review:**

The Office of Special Education Programs (OSEP) monitored NMPED'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 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 ensure that it, and its LEAs, document time and effort in accordance with Federal requirements.	No	2 CFR §225 Appendix B(8)(h)
Criterion 2.6	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 2.7	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

<b>Monitoring Area 3, IDEA Part B: ARRA</b>			
<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<b>Criterion 3.1</b>	The SEA ensures that infrastructure investments are properly certified and posted.	Yes	ARRA §1511
<b>Criterion 3.2</b>	The SEA has procedures to ensure that LEAs comply with the “Buy American” requirements.	No	2 CFR §§176.60-176.170
<b>Criterion 3.3</b>	The SEA has procedures to ensure that LEAs comply with the prevailing wage requirements.	No	2 CFR §§176.180, 176.190
<b>Criterion 3.4</b>	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:** Criterion 3.1: During OSEP’s Continuous Improvement Visit (CIV) on October 3-5, 2011, the SEA reported that it did not certify and post certifications for infrastructure investments that were purchased with IDEA ARRA funds as required under ARRA section 1511.

**Citation:** Under ARRA section 1511, for covered funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, was required to certify that the infrastructure investment received the full review and vetting required by law and that the chief executive accepted responsibility that the infrastructure investment was an appropriate use of taxpayer dollars. Such certification was required to include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and had to be posted on a website and linked to the website established by ARRA section 1526 (See <http://www.recovery.gov>).

**Further Action Required:** In an email dated November 4, 2011, NMPED provided the a Web link with the required certifications. No further action is required.

<b>Monitoring Area 4, IDEA Part B: Level of Effort</b>			
<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<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.	Yes	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.	Yes	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.	Yes	34 CFR §300.203(b)

**Finding:** Criterion 4.1: On August 10 and 17, 2012, NMPED submitted requests for a waiver of the State MFS requirement, pursuant to 34 CFR §300.163, for State fiscal years (SFYs) 2010 and 2011. On June 3, 2013, the Department granted the waiver request for SFY 2010 and denied the request for SFY 2011. The Department has made a proposed determination that the State did not meet the MFS requirement in SFY 2011, and the State has requested a hearing regarding that proposed determination.

Furthermore, in the program determination letter (PDL) dated April 24, 2015, related to the State's FYs 2012 and 2013 single state audits, the Office of Special Education and Rehabilitative Services (OSERS) sustained the auditor's finding that NMPED does not have procedures reasonably designed to accurately calculate the amount of State financial support for special education and related services made available for special education and related services for children with disabilities. In that PDL, OSERS required the State to provide, within 90 days of the date of the PDL, a copy of its revised written policy and procedures, *Individuals with Disabilities Education Act State Maintenance of Effort (MOE)*, to ensure it is consistent with the requirements in 20 U.S.C. § 1412(a)(18)(A), 34 CFR §300.163(a), and guidance provided by OSERS.

**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. [See OSEP Memorandum 10-5, Maintenance of State Financial Support under the Individuals with Disabilities Education Act, December 2, 2009.](#)

**Required Action:** Subsequently, on June 6, 2015, and September 8, 2015, NMPED submitted its revised policy and procedures, and OSEP is working with the State to finalize the procedures in a manner consistent with IDEA. Because this matter is being addressed through the audit resolution process, no additional actions are required at this time.

**Finding:** Criteria 4.2 and 4.3: As discussed and documented in OSERS' letter dated June 3, 2013, related to the State's requests for waivers from the requirement to provide State financial support for special education and related services for SFYs 2010 (July 1, 2009 through June 30, 2010) and SFY 2011 (July 1, 2010 through June 30, 2011), NMPED does not have procedures in place to ensure that, as part of its determination that an LEA is eligible for an IDEA Part B subgrant, each LEA had met the eligibility standard for MOE, as provided in 34 CFR §300.203(b); or to ensure that each LEA had met the MOE compliance standard, as provided in 34 CFR §300.203.1 As detailed in the June 3, 2013 letter, NMPED calculates LEA MOE compliance under the IDEA by only counting expenditures with specific job classification codes and object codes in NMPED's Operating and Budget Management System. The document indicates that NMPED permits LEAs to include in their MOE Expenditures, funds expended for only job classification codes 51100 (Salaries Expense), 51200 (Overtime Expense), and 51300 (Additional compensation). As a result, the State is not including, in its calculation of LEA MOE expenditures, any funds expended for benefits related to the education of children with disabilities. In a April 11, 2013 letter, NMPED indicated it permits LEAs that have the capability to include, if approved by NMPED, the cost of benefits when calculating LEA MOE expenditures. In addition, in a telephone conversation on April 8, 2013, representatives from NMPED indicated that social workers are not included in the State's LEA MOE calculations, and explained in its April 11, 2013 letter that, "since social workers provide services for a number of different students and programs school-wide and district-wide are not specifically or solely assigned to special education students, it is not possible at the state level to track the individual assignments of each social worker."

**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

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1 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 34 CFR §300.203(a), and the compliance standard is set out in 34 CFR §300.203(b).

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 during the comparison year, except as provided in 34 CFR §§300.204 and 300.205.

**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 budgets, for the education of children with disabilities, at least the same total or per capita amount of local, or State and local, funds as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available (after taking into consideration the exceptions or adjustment in 34 CFR §§300.204 and 300.205, as permitted by 34 CFR §300.203(a)(2)), consistent with 34 CFR §300.203(a)(1)2.
2. Revised State policies and procedures that demonstrate the SEA will ensure that each LEA expends, 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 expended for that purpose from the same source in the preceding fiscal year (after taking into consideration the exceptions or adjustment in 34 CFR §§300.204 and 300.205, as permitted by 34 CFR §300.203(b)(2)), consistent with 34 CFR §300.203(b)(1).
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)<sup>3</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.

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<sup>2</sup> The final regulations on LEA MOE, published on April 28, 2015, revised the eligibility standard to specify that the comparison year, regardless of the method used, is the most recent fiscal year for which information is available. In addition, the final regulations clarify that when determining the amount the LEA must budget, the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment in §§300.204 and 300.205 that the LEA took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting, and that the LEA reasonably expects to take in the fiscal year for which the LEA is budgeting.

<sup>3</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.

**Finding:** Criterion 4.4: During the CIV conducted on October 3-5, 2011, the SEA reported that, when determining whether an LEA was eligible for an IDEA Part B 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 had 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)4. NMPED explained that the State provided all its LEAs 100 percent of the non-Federal share of the costs of special education and related services, and therefore did not offer the option of a comparison of local funds only on a total or a per capita basis. However, in its June 3, 2013 letter, OSERS concluded that NMPED has not established that New Mexico “pays or reimburses all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services.” Therefore, the State must comply with the requirements detailed below.

**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 standard 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 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 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);
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

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4 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 on LEA MOE, published on April 28, 2015, list the four methods individually in both the eligibility standard in §300.203(a)(1) and the compliance standard in 34 CFR §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.

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.

<b>Monitoring Area 5, IDEA Part B: Procurement, Property, and Record Retention</b>			
<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<b>Criterion 5.1</b>	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
<b>Criterion 5.2</b>	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
<b>Criterion 5.3</b>	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
<b>Criterion 5.4</b>	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)
<b>Criterion 5.5</b>	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
<b>Criterion 5.6</b>	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
<b>Criterion 6.1</b>	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 OSEP’s CrEAG telephone interview conducted on September 1, 2011, and the CIV conducted on October 3-5, 2011, the State reported that it relied 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) and (3), 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 had 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)5. The State also reported that it had no mechanism to ensure the State issues management decisions on audit findings within six months after receipt of the LEA’s audit report; or to ensure the LEA takes timely and appropriate corrective action on audit findings, as required under OMB Circular A-133, Subpart D, § \_\_.400(d)(5)6. Based on this information, 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) and (3), 80.40(a), 300.149, and 300.600, and OMB Circular A-133, Subpart D, § \_\_.400(d)(5).

Furthermore, in a program determination letter (PDL) dated September 13, 2012, related to the State’s fiscal year (FY) 2011 single State audit, OSERS sustained the auditors’ finding related to subrecipient monitoring. Specifically, the auditors found that NMPED monitored approximately 87 percent of subrecipients but did not perform subrecipient monitoring on the remaining 13 percent. The auditors stated that, approximately \$450 million of the total of \$515 million paid to subrecipients was included in the subrecipient monitoring process. Additionally, required information such as the Catalog of Federal Domestic Assistance (CFDA) number, the name of the Federal awarding agency, and reference to A-133 compliance requirements was not communicated to subrecipients in

5 See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provisions governing audit requirements at Subpart F of 2 CFR Part 200 and monitoring and reporting program performance at 2 CFR §§200.328 and 200.331 replace the provisions previously found at 34 CFR §§80.26(b)(2) and 80.40(a), respectively.

6 See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provision at 2 CFR §200.521(d) governing management decisions replaces the provision previously found at OMB Circular A-133, Subpart D, § \_\_.400(d)(5).

award letters or other means for the IDEA Part B program. In that PDL, OSERS required the State to provide, within 60 days of receipt of the PDL: (1) a copy of NMPED's subrecipient monitoring policies, procedures and protocols that will be used to ensure LEA compliance with the IDEA and EDGAR requirements; (2) a copy of NMPED's policies and procedures that will ensure the State timely reviews LEA A-133 audits, issues management decisions on audit findings within six months after receipt of the LEA's audit report; and ensures the LEA takes timely and appropriate corrective action on audit findings; (3) documentation that demonstrates that subrecipients of FFY 2012 IDEA Part B funds received notice of the information required under OMB Circular A-133, Subpart D, § \_\_.400(d)(1) and (2); and (4) with its FFY 2011 Annual Performance Report (APR), due February 1, 2013, documentation that demonstrates that NMPED has implemented these policies and procedures and has reviewed and issued management decisions on audit findings within six months after receipt of the LEA's audit report. NMPED submitted subrecipient monitoring procedures on December 3, 2012, but did not provide, with its FFY 2011 APR, the required documentation of implementation. Because the State had not provided the required information in a timely manner, this matter, including further corrective actions and a timeline, was once again addressed under separate cover in OSERS' letter dated February 21, 2014.

**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-1337, 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:** Subsequently, in an email dated March 31, 2014, NMPED provided documents related to this finding. OSEP will continue to work towards resolution of this finding through its audit resolution process.

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7 See footnote 3.