

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

New York State Education Department (NYSED)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored NYSED'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 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**

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.	Yes	34 CFR §80.21(c)&(i)

Finding: Criterion 1.1: Based on the review of documents, including email correspondence from the State on February 5, 2015, analysis of data, and interviews with State personnel on October 16, 2014 and November 6, 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, 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, as required by 34 CFR §300.200. Specifically, the State did

not require assurances for all of the conditions in 34 CFR §§300.201, 300.202, 300.203, 300.206-300.209, and 300.212-300.213. Second, the State impermissibly required LEAs with Article 81¹ schools within their boundaries to make a subgrant, or what New York refers to as a suballocation, of their IDEA section 611 and section 619 funds to those Article 81 schools. Specifically, the State reported that it allocates funds under 34 CFR §§300.705 and 300.815-300.816 to its LEAs and Article 81 schools, even though the Article 81 schools are private residential schools and therefore do not meet the definition of LEA in 34 CFR §300.28. The State provides each LEA with its own section 611 and section 619 allocations, as well as separate section 611 and section 619 allocations for any Article 81 schools within the LEA's boundaries, and requires the LEA to flow through the Article 81 schools' section 611 and section 619 allocations.

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 §300.705(a), “[e]ach State that receives a grant under section 611 of the Act for any fiscal year must distribute any funds the State does not reserve under 34 CFR §300.704 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act.” These funds must be allocated to LEAs in accordance with the required formula in 34 CFR §300.705(b). Under 34 CFR §300.815, “[e]ach State that receives a grant under section 619 of the Act for any fiscal year must distribute all of the grant funds the State does not reserve under 34 CFR §300.812 to LEAs (including public charter schools that operate as LEAs) in the State that have established their eligibility under section 613 of the Act.” These funds must be allocated to LEAs in accordance with the required formula in 34 CFR §300.816. Under 34 CFR §76.50, the authorizing statute determines the extent to which a State may make subgrants to eligible applicants. Only entities that meet the definition of LEA in 34 CFR §300.28 and have established their eligibility under 34 CFR §300.200, are eligible to receive a subgrant under 34 CFR §§300.705 and 300.815. While there is nothing in the IDEA that would preclude the State from requiring an LEA to make payments to the Article 81 schools to pay the cost of providing special education and related services to children with disabilities for whom the LEA is responsible for providing a free appropriate public education (FAPE), the State cannot require the LEA to subgrant its IDEA section 611 or section 619 funds to make the payments. In addition, the State must ensure that the rate for the payments is reasonable in light of the services provided and that the LEA has, in setting this rate, followed the same policies and procedures it uses for procurements paid for from its non-Federal funds.² 34 CFR §80.36.³

¹ Article 81 schools are approved private residential schools that provide services to students with disabilities pursuant to New York Education Code, Title VI, Article 81: Education of Children Residing in Child Care Institutions. See May 2014 Memorandum from John T. Delaney titled “Submission of the 2014-15 Application for Individuals with Disabilities Education Act (IDEA) Part B Section 611 and Section 619 Federal Funding for the Education of Students with Disabilities” at <http://www.p12.nysed.gov/specialed/finance/2014-15-idea-application-instructions-memo.pdf>.

² See Letter to Cort, June 20, 2005 at <http://www2.ed.gov/policy/speced/guid/idea/letters/2005-2/cort062005funds2q2005.pdf>. As explained in this letter, “while an LEA may use IDEA funds to pay for special education and related services provided by other entities, there is no provision in IDEA that would permit LEAs, even at the direction of the State, to make subgrants of section 611 and section 619 funds, or what you referred to as suballocations.” OSEP also noted in this letter that because LEAs were contracting with the approved special education programs (ASEPs) to provide special education and related services, LEAs therefore have a vendor relationship and must follow their procurement policies and procedures.

Further Action Required: Within 90 days of the date 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. Revised State policies and procedures that demonstrate the SEA will: (a) allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with 34 CFR §§300.705 and 300.815-300.816; and (b) not require LEAs to make subgrants of section 611 and section 619 funds to Article 81 schools.
3. A copy of the correspondence in which the State has informed its LEAs that the SEA improperly required LEAs to subgrant IDEA section 611 and section 619 funds in FFY 2014 and FFY 2015 to the Article 81 schools within their boundaries. The SEA must ensure that any LEA that was required to make a subgrant of section 611 or section 619 funds receives the amount of section 611 and section 619 funds to which it was entitled in FFY 2014 and FFY 2015. The SEA must either: (a) provide those LEAs the amount of section 611 and section 619 funds the LEAs were improperly required to subgrant to the Article 81 schools within their boundaries, or (b) provide those LEAs the amount of section 611 and section 619 funds the LEAs were improperly required to subgrant to the Article 81 schools within their boundaries that exceeded the costs for special education and related services, including non-medical care and room and board, provided by the Article 81 schools to children with disabilities for whom the LEA was responsible for providing FAPE, assuming the costs are reasonable for the services provided, consistent with 2 CFR §200.404. The State may use State funds, section 619 State set-aside funds and/or section 611 State set-aside funds for FFY 2014 and/or FFY 2015 to provide the required amount of funds to those LEAs.
4. 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),⁴ 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 November 6, 2014 and December 5, 2014, OSEP finds that the State's 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. Specifically, the State only allows LEAs 24 months to obligate IDEA Part B funds unless an LEA requests an

³ 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. Specifically, the Uniform Guidance provision at 2 CFR §200.317 governing procurement replaces the provision previously found at 34 CFR §80.36.

⁴ See footnote 3.

extension. Further, the State has not notified all LEAs that they may request an extension allowing them to obligate funds for the full 27 months.

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 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 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 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.

Finding: Criterion 1.5: Based on the review of documents, analysis of data, and interviews with State personnel on October 16, 2014, November 6, 2014 and December 5, 2014, OSEP finds that the SEA’s procedures for reallocating funds when an LEA does not expend the full amount of its IDEA Part B subgrant are not consistent with the requirements in 34 CFR §§300.705(c) and 300.817. Specifically, when any of its LEAs do not expend the full amount of their IDEA Part B subgrant within 24 months (and do not request an extension), the SEA reallocates the funds to other LEAs, without determining whether or not the original LEA is adequately providing FAPE to all children with disabilities residing in the area served by the LEA with State and local funds, or if the other LEAs that receive the reallocation are not adequately providing special education and related services to all children with disabilities in the area served by the LEAs. For example, the SEA reported that if LEA A has FFY 2012 funds that have not been obligated within 24 months, and the LEA has not requested an extension, the funds are provided to LEA B to pay for outstanding

obligations from FFY 2013. The SEA then deducts the amount of additional FFY 2012 funds (originally allocated to LEA A) LEA B was provided from LEA B's FFY 2013 allocation. The funds deducted from LEA B's FFY 2013 allocation are then included in the FFY 2014 funds to be distributed to all LEAs based on population and poverty under 34 CFR §§300.705(b)(3) and 300.816(c).

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 90 days of 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.

Finding: Criterion 1.6: Based on the review of documents, analysis of data, and interviews with State personnel on October 1, 2014 and November 6, 2014, OSEP finds that NYSED does not have procedures to ensure that LEA interest earnings that exceed the minimum amount permissible are returned to the Department.⁵

Citation: Under 34 CFR §80.21(i), except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (13 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Department. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses. As part of its general supervisory responsibilities under 34 CFR §§300.149 and 300.600, the SEA must ensure that each LEA returns interest accrued in excess of \$100 per year to the Department.

Further Action Required: Within 90 days of the date of this letter, the State must develop and submit to OSEP policies and procedures that demonstrate that the SEA will ensure that any interest accrued by an LEA in excess of \$500 per year is returned to the Department. See 2 CFR §200.305(b)(9).⁶

⁵ OSEP notes that the U.S. Department of Education Office of Inspector General previously identified this issue and specifically found that New York does not have proper procedures in the "State Educational Agencies' Implementation of Federal Cash Management Requirements under the American Recovery and Reinvestment Act" Alert Memo, ED-OIG/L09J0007, October 2009. <https://www2.ed.gov/about/offices/list/oig/auditreports/AlertMemorandums/109j0007.pdf>

⁶ See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provision at 2 CFR §200.305 governing payment replaces the provision previously found at 34 CFR §80.21. The provision in 2 CFR §200.305(b)(9) increased the amount of interest that may be retained from \$100 to \$500.

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	34 CFR §§76.799, 300.209(b)

Finding: Criterion 2.2: Based on the review of documents, analysis of data, and an interview with State personnel on October 1, 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.

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 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 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.	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.	Yes	34 CFR §300.203(b)

Finding: Criteria 4.2, 4.3 and, 4.4: Based on the review of documents, analysis of data, and an interview with State personnel on October 1, 2014, OSEP finds that the State does not have procedures to ensure that each LEA meets the LEA MOE requirements set forth in 34 CFR §§300.203, 300.205 and 300.608(a).⁷ Specifically, during a telephone interview with State personnel conducted on October 1, 2014, the SEA reported that:

1. It is not ensuring, as part of its determination that an LEA is eligible for an IDEA Part B subgrant, that each LEA has met the eligibility standard for MOE, as provided in 34 CFR §300.203(b).
2. When determining whether an LEA is in compliance with the requirement to maintain effort in 34 CFR §300.203 on a per capita basis, the State uses the wrong year's child count data in its computations. Rather than using the child count data

⁷ 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).

from the fiscal year for which the LEA seeks to establish compliance, the State uses the child count data from the previous fiscal year. For example, in order to determine if an LEA met the MOE requirement in 2014-2015 using a combination of State and local funds on a per capita basis, the SEA determined the per capita amount based on the child count in 2013-2014, rather than the child count in 2014-2015.

3. It does not prohibit an LEA from taking the reduction in 34 CFR §300.205(a) if the State determines under section 616 of the IDEA that the LEA “needs assistance”, “needs intervention”, or “needs substantial intervention” in implementing the requirements of Part B of the IDEA.

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).

1. 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.
2. Under the compliance standard in 34 CFR §300.203(a) and (b), and the SEA’s general supervisory responsibilities in 34 CFR §300.149, the SEA must ensure that an LEA has expended, 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 during the comparison year, unless the LEA has an allowable exception or adjustment under 34 CFR §§300.204 and 300.205. To determine whether an LEA meets the compliance standard on a per capita basis, the SEA must use child count data from the fiscal year for which the LEA seeks to establish compliance.
3. Under 34 CFR §300.205(a), for any fiscal year for which the allocation received by an LEA under §300.705 exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by not more than 50 percent of the amount of that excess. However, under 34 CFR §300.205(c), if an SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of section 613(a) of the IDEA and its implementing regulations or the SEA has taken action against the LEA under section 616 and subpart F of its implementing regulations, the SEA must prohibit the LEA from reducing the level of expenditures under 34 CFR §300.205(a) for that fiscal year. In addition, under 34 CFR §300.608(a), if the SEA determines an LEA is not meeting the requirements of Part B of the IDEA, including the targets in the State’s performance plan, the SEA must prohibit the LEA from reducing the LEA’s MOE

under §300.205(a) for any fiscal year. See IDEA section 616(f). Therefore, an SEA must prohibit an LEA from taking advantage of the MOE reduction under 34 CFR §300.205(a) if the LEA's determination under section 616 of the IDEA is "needs assistance", "needs intervention", or "needs substantial intervention."

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:
 - a. 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 in the most recent fiscal year for which information is available, consistent with 34 CFR §300.203(a)(1).⁸
 - b. When determining whether an LEA meets the compliance standard in 34 CFR §300.203(b) based on either local funds only on a per capita basis or a combination of State and local funds on a per capita basis, determine the per capita amount expended based on the LEA's child count data for the fiscal year for which the LEA is seeking to establish compliance.⁹
 - c. Prohibit an LEA from reducing the level of expenditures under 34 CFR §300.205(a) if the SEA determines under section 616 that the LEA "needs assistance", "needs intervention", or "needs substantial intervention" in implementing the requirements of Part B of the IDEA in accordance with 34 CFR §§300.205(c) and 300.608(a).
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.

⁸ 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 the LEA reasonably expects to take in the fiscal year for which the LEA is budgeting.

⁹ The final regulations on LEA MOE, published on April 28, 2015, do not change the standards for meeting MOE using local funds only on a per capita basis or a combination of State and local funds on a per capita basis. See 80 Fed. Reg. 23644, 23649-23650 (Apr. 28, 2015).

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.	Yes	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: Criterion 5.3: Based on the review of documents, analysis of data, and an interview with State personnel on October 16, 2014, OSEP finds that the State does not have procedures to ensure that the procurement mechanisms used by its LEAs conform to applicable Federal law and State procurement rules. Specifically, the SEA reported that, while it provides LEAs with guidance regarding their procurement mechanisms, the SEA does not require that LEA procurement procedures reflect applicable State and local laws and regulations that conform to applicable Federal law.

Citation: Under 34 CFR §80.36(b)(1), subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law.

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 the procurement mechanisms used by its LEAs conform to applicable Federal law and State procurement rules, as required by 2 CFR §200.318(a)¹⁰; 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 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.

¹⁰ See footnote 3. Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, the Uniform Guidance provisions at 2 CFR §200.318(a) governing general procurement standards replace the provision previously found at 34 CFR §80.36(b)(1).