

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

Oklahoma State Department of Education (OKSDE)

## Scope of Review:

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

**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.	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
<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.	Yes	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.	No	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)

**Finding:** Criterion 2.1: Based on documents reviewed, email correspondence including but not limited to emails from OKSDE on November 9, 2011 and May 22, 2012, and a telephone call between OSEP and OKSDE on May 30, 2012, OSEP determined that the State did not expend IDEA Part B funds in accordance with the requirements of IDEA Part B. Specifically, OKSDE stated that it had used IDEA Part B funds to replace \$552,594 of State funding for the Rural Infant Stimulation Environment (RISE) program, during State fiscal year (SFY) 2011 (July 1, 2010 to June 30, 2011). The RISE program is a preschool program for infants, toddlers, and children, including children with disabilities, ages 1 through 5 years, that charges tuition to all parents, including those of children with disabilities, in the program. OKSDE indicated that children are parentally placed, instead of placed by the public agency, in the RISE program. OKSDE did not provide information indicating that any public agency, as defined in 34 CFR §300.33, participates in determining the educational placement of children with disabilities in the RISE program. It is OSERS' understanding that Oklahoma does not mandate a free appropriate public education (FAPE) for children with disabilities below age 3.

**Citation:** Under IDEA Part B, each State and its public agencies must make FAPE available to all children with disabilities residing in the State in mandated age ranges in the least restrictive environment (LRE). 34 CFR §300.101(a), and §§300.114 through 300.117. A preschool child with a disability ages three through five who is eligible to receive special education and related services is entitled to all of the rights and protection guaranteed under Part B of the IDEA and its implementing regulations in 34 CFR Part 300. The State must ensure that if a preschool child is determined eligible for services under Part B of the IDEA, an individualized education program (IEP), or an individualized family service plan that meets the requirements of section 636(d) of IDEA, is developed, reviewed and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324. See 34 CFR §300.112. Under 34 CFR §300.116(a)(1), “in determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that – [t]he placement decision – [i]s made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.” The placement decision must be made in conformity with the LRE requirements in 34 CFR §§300.114 through 300.117 and based on the child’s IEP. We also note that, even if Part B funds could have been used for the RISE program (i.e., if the placement decision had not been parental but instead had been made by a group of persons consistent with 34 CFR §300.116(a)(1)): (1) consistent with 34 CFR §300.101, the Part B funds could not have been used to pay for services to children under the age of three in Oklahoma, because Oklahoma does not mandate FAPE for children under the age of three; and (2) consistent with 34 CFR §300.17(a), the public agency must make the program available at no cost to the parent. See OSEP’s February 29, 2012 Dear Colleague Letter (“If a public agency determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.”); see also Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, Analysis of Comments and Changes, 71 Fed. Reg. 46540, 46589 (Aug. 14, 2006); and OSEP’s March 17, 2008 Letter to Anonymous, 108 LRP 33626.

**Further Action Required:**

OSEP concludes that, because OKSDE used \$552,594 of IDEA Part B funds to provide services to children who were parentally placed in the RISE program during SFY 2011, the IDEA Part B funds expended for the RISE program constitute an unallowable expenditure. Under section 453(a)(1) of GEPA, a recipient that makes an unallowable expenditure is “required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award.” 20 U.S.C. §1234b(a)(1); see also 34 CFR §81.32(a)(1). An identifiable Federal interest includes “providing only authorized services or benefits and complying with expenditure requirements and conditions.” 20 U.S.C. §1234b(a)(2). Therefore, the Department seeks recovery from Oklahoma in the amount of \$552,594.

In addition, OSEP finds that OKSDE lacked policies and procedures, in SFY 2011 and in subsequent years through the present, to ensure that all children with disabilities aged three through five years old residing in the area served by the RISE program, and who are in need of special education and related services, have an IEP developed and implemented in accordance with 34 CFR §§300.320 through 300.324; and have an educational placement decision made in accordance with the requirements in 34 CFR §300.116.

Therefore, within 90 days from the date of this letter, the State must:

1. Develop and submit to OSEP State policies and procedures ensuring that all children with disabilities ages three through five years old residing in the area served by the RISE program, and who are in need of special education and related services, have an IEP developed and implemented in accordance with 34 CFR §§300.320 through 300.324; and have an educational placement decision made in accordance with the requirements in 34 CFR §300.116;
2. Monitor LEAs located in or near the area served by the RISE program to ensure that all children with disabilities ages three through five years old residing in those areas and who are in need of special education and related services; have an IEP developed and implemented in accordance with 34 CFR §§300.320 through 300.324; and have an educational placement decision made in accordance with the requirements in 34 CFR §300.116; and inform the Department of the outcome of the monitoring; and
3. Repay \$552,594, using non-Federal funds or Federal funds for which accountability to the Federal government is not required, to the Department, based on the unallowable expenditure of \$552,594 of IDEA Part B funds to support the RISE program during SFY 2011. Please refer to the attached document entitled "Repayment and Appeal Information" for further directions.

**Finding:** Criterion 2.2: During the CIV conducted on September 28, 2011 and the CrEAG telephone interview conducted on May 4, 2012, the State reported that it uses an assurance but 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 the Uniform Guidance<sup>1</sup>, of this finding of noncompliance and OSEP's required corrective actions.

### 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

<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.

## 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.	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.	No	34 CFR §§300.203(a), 300.204-300.205
Criterion 4.4	The SEA's procedures for reviewing LEA MOE consider each of the following ways to calculate MOE: total local funds; per capita local funds; total local and State funds; or per capita local and State funds. The SEA's procedures for reviewing LEA MOE find an LEA to have met MOE if the LEA met MOE based on one or more of those comparisons.	No	34 CFR §300.203(b)

**Finding:** Criterion 4.1: During the MFS telephone interview conducted on December 13, 2011 and a subsequent email dated September 18, 2012, the State reported that it is developing, but has yet to implement, procedures that include the amount of State financial support for special education and related services from State agencies other than the SEA made available for special education and related services. Specifically, the State reported that it was unable to determine the amount of State financial support made available by the Oklahoma Department of Human Services for special education and related services for children with disabilities.

**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.](#)

**Comment [DYS1]:** See page 1 for list of abbreviations

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

1. Procedures and documentation demonstrating that its calculations of State financial support for special education and related services include State financial support made available for special education and related services by all applicable State agencies as required by IDEA;
2. Either an assurance that the data submitted in Section V of the State's FFY 2015 State Application under Part B of IDEA was consistent with 34 CFR §300.163(a); or revised data certified by the State Budget Officer or his/her authorized representative, consistent with 34 CFR §300.163(a); and
3. A copy of the correspondence in which the State has informed its State audit office that is responsible for conducting audits in accordance with the Single Audit Act and the Uniform Guidance<sup>2</sup>, of this finding of noncompliance and OSEP's required corrective actions.

**Finding:** Criterion 4.2: During the CIV conducted on September 28, 2011, OKSDE reported that it was not ensuring, as part of its determination that an LEA is eligible for an IDEA Part B subgrant, that each LEA had met the eligibility standard for maintenance of effort (MOE), as provided in 34 CFR §300.203(b)<sup>3</sup>. The regulation in 34 CFR §300.203 includes both an eligibility standard and a compliance standard. This finding relates only to the eligibility standard.

**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 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.

---

<sup>2</sup> See footnote 1.

<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).

**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 OKSDE 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, consistent with 34 CFR §300.203(a)(1)<sup>4</sup>.
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 the Uniform Guidance<sup>5</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.

## 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

<sup>4</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.

<sup>5</sup> See footnote 1.

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
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