

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

## Tennessee Department of Education (TDE)

### Scope of Review:

The Office of Special Education Programs (OSEP) monitored TDE'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 Circular A-133 and Office of Inspector General audits, and conducted both on-site and telephone interviews with State staff.

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.	No	34 CFR §76.709(a)
Criterion 1.3	The SEA has procedures to obligate funds solely during the 27 month period of availability and liquidate funds not later than 90 days after the end of the funding period or an extension of that timeline authorized by the Department.	No	34 CFR §§76.703, 76.709, 80.23
Criterion 1.4	The SEA has procedures to ensure that LEAs obligate funds solely during the 27 month period of availability and liquidate funds not later than 90 days after the end of the funding period or an extension of that timeline authorized by the Department.	No	34 CFR §§76.709, 80.23
Criterion 1.5	The SEA has procedures to reallocate IDEA section 611 and section 619 subgrants, when appropriate, consistent with the regulations.	No	34 CFR §§300.705(c), 300.817
Criterion 1.6	The SEA has procedures to draw down funds based on immediate needs; any interest accrued by the SEA or LEAs in excess of \$100 per year per account is returned to the Department.	No	34 CFR §80.21(c)&(i)

**Finding:** Criterion 1.1: During a technical assistance visit to discuss the procedures for allocating IDEA section 611 and section 619 subgrants on September 25-26, 2013, the State reported that its procedures for calculating IDEA FFY 2013 section 619 subgrants were inconsistent with the requirements in 34 CFR §300.816 and a May 31, 2013 email with the subject line "Explanation of Section 619 Subgrant Requirements" from Gregg Corr, Director, Monitoring and State Improvement Planning Division to SEA Directors. The FFY 2013 appropriation for the Preschool Grants for Children with Disabilities program authorized under section 619 of the IDEA was below the 1997 level for the first time. Therefore, if a State chose to set-aside the maximum amount of FFY 2013 section 619 funds

for State-level activities, the amount available for making LEA subgrants would be below 75% of the State's FFY 1997 section 619 grant. The May 31, 2013 email provided information on how States were required to allocate FFY 2013 section 619 funds to LEAs in that situation. After TDE subtracted the amount of its State set-aside from the total award, the amount available for making subgrants in FFY 2013 was less than 75% of the State's FFY 1997 section 619 grant. However, in allocating the section 619 subgrants to its LEAs, TDE utilized a formula that did not ratably reduce LEA subgrants, as required in the May 31, 2013 email.

**Citation:** The May 31, 2013 email stated that if, after the State set-aside is subtracted from the total award, the amount available for making subgrants is less than 75% of the State's FFY 1997 section 619 grant (the amount in the "Base Payment for LEAs" column), the State must ratably reduce each LEA's base payment by the percentage of the reduction in the total amount actually available for making base payments in FFY 2013. For example, if the total amount in the "Base Payment for LEAs" column is \$100 and the total amount available for making base payments in FFY 2013 is \$90, the reduction in the total base payment amount from FFY 2012 to FFY 2013 is 10%, and each LEA's base payment for FFY 2013 must be reduced by 10%. Because States are required to make base payments in accordance with IDEA section 619(g) and 34 CFR §300.816, in a year in which the total amount for base payments is less than 75% of a State's FFY 1997 section 619 grant, States must use the ratably reduction approach to ensure LEAs continue to receive base payments that are as close as possible, given the reduction, to what they would have received in FFY 1997 if the State had distributed 75% of its section 619 grant. States do not have the option of using another approach, such as making base payments based on a current child count. The ratably reduction approach is also consistent with how the Department is required under IDEA section 619(c)(3) to allocate section 619 funds to States if the amount of section 619 funds available for allocation to States is below the FFY 1997 level. After making base payments, the State, if necessary, must make base payment adjustments in accordance with 34 CFR §300.816(b) based on the ratably reduced base payments. The State will not have any remaining section 619 funds available after making base payments, and therefore, will be unable to make a population or poverty payment.

**Further Action Required:** Subsequently, on October 30, 2013, the State reported that it reallocated the FFY 2013 IDEA section 619 subgrants to LEAs and provided OSEP with the revised IDEA 619 subgrant allocations that demonstrate the State corrected the identified noncompliance. No further action is required.

## 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	Yes	34 CFR §§300.16, 300.202(a)(2)

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
	education and related services to children with disabilities in accordance with IDEA.		
<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 2.2: During the CrEAG telephone interview conducted on August 15, 2012, the State reported that its excess cost computations were inconsistent with requirements set forth in 34 CFR §300.16 and Appendix A to 34 CFR Part 300. Specifically, in order to compute the excess costs, the State advised LEAs to multiply the number of children with disabilities in the LEAs' elementary schools or secondary schools in the preceding school year (rather than the current school year) by the average annual per pupil expenditures for the preceding school year.

**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. In order to compute excess costs properly, an LEA must multiply the number of children with disabilities in the LEA's elementary schools or secondary schools in the current school year by the average annual per student expenditures for the preceding school year. As part of its general supervisory responsibilities under 34 CFR §§300.149 and 300.600, the SEA must ensure that LEAs are computing their excess costs in a manner consistent with the above requirements. Further guidance explaining this computation is available on GRADS 360 website at <https://osep.grads360.org/#program/fiscal-resources>.

**Further Action Required:** Within 60 days of the date of this letter, the State must submit to OSEP:

1. Revised State policies and procedures that demonstrate the SEA will ensure that LEAs comply with IDEA's excess cost computation requirements, as set forth in 34 CFR §300.16 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 Office of Management and Budget (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 to OSEP 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.	Yes	34 CFR §300.163(a)

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 4.2	The SEA has procedures to ensure that each LEA budgets, for the education of children with disabilities, at least the same amount as the LEA spent for that purpose in the most recent prior year for which information is available.	No	34 CFR §300.203(b)
Criterion 4.3	The SEA has procedures to ensure that each LEA expends at least the same amount as it expended in the immediate prior year for the education of children with disabilities, unless the LEA has allowable exceptions or adjustments.	No	34 CFR §§300.203(a), 300.204-300.205
Criterion 4.4	The SEA's procedures for reviewing LEA MOE consider each of the following ways to calculate MOE: total local funds; per capita local funds; total local and State funds; or per capita local and State funds. The SEA's procedures for reviewing LEA MOE find an LEA to have met MOE if the LEA met MOE based on one or more of those comparisons.	No	34 CFR §300.203(b)

**Finding:** Criterion 4.1: During the State MFS telephone interviews conducted on August 28, 2012 and March 26, 2013, the State reported that it was developing, but had not yet implemented procedures that included the amount of State financial support made available by State agencies other than the SEA for special education and related services.

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

**Further Action Required:** Subsequently, on December 20, 2013, the State provided 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, consistent with 34 CFR §300.163(a). The State provided a revised MFS calculations in Section V of its FFY 2014 IDEA Part B application that included financial support for special education and related services from the Tennessee Department of Human Services. No further action is required.

## Monitoring Area 5, IDEA Part B: Procurement, Property, and Record Retention

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 5.1	The SEA obtains approval from the Department prior to using its State-level IDEA funds for equipment, construction, or alteration of facilities.	No	34 CFR §300.718
Criterion 5.2	The SEA has procedures to ensure that an LEA obtains its approval prior to using IDEA funds for equipment, construction, or alteration of facilities.	No	34 CFR §300.718
Criterion 5.3	The SEA has procedures to ensure that its procurement mechanisms, and those used by its LEAs, conform to applicable Federal law and State procurement rules.	No	34 CFR §80.36
Criterion 5.4	The SEA has procedures to ensure that each LEA maintains a physical inventory of property acquired with IDEA funds and conducts inventories to reconcile with property records at least once every two years.	No	34 CFR §80.32(d)(2)
Criterion 5.5	The SEA has procedures to ensure that it, and its LEAs, do not award or obligate funds to any party that has been debarred or suspended.	No	34 CFR §80.35
Criterion 5.6	The SEA has procedures to ensure it, and its LEAs, maintain financial and programmatic records for the period of time required by Federal law.	No	34 CFR §80.42

**Finding:** None.

## Monitoring Area 6, IDEA Part B: Fiscal Monitoring

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 6.1	The SEA has a reasonably designed system to monitor subgrantees to ensure compliance with applicable Federal fiscal requirements.	No	34 CFR §§80.26, 80.40, 300.149, 300.600

**Finding:** None.