

# Office of Special Education Programs

## Fiscal Monitoring Instrument

### Utah State Office of Education (USOE)

#### Scope of Review:

The Office of Special Education Programs (OSEP) monitored USOE's procedures for ensuring compliance with the fiscal components of the Individuals with Disabilities Education Act (IDEA) and other related Federal fiscal requirements. In performing this review, OSEP reviewed publicly available information, State-submitted documentation, and Office of Management and Budget (OMB) Circular A-133 and Office of Inspector General audits, and conducted both on-site and telephone interviews with State staff.

Effective July 1, 2015, for IDEA Part B FFY 2015 grant awards, IDEA Part B funds are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR Part 200 and commonly referred to as the Uniform Guidance. The Uniform Guidance provisions in 2 CFR Part 200 replace provisions previously found in the Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74 and 80 and prior OMB Circulars A-87 and A-133. In addition, effective July 1, 2015, IDEA Part B funds are subject to the revised local educational agency (LEA) maintenance of effort (MOE) regulations that were published in the Federal Register on April 28, 2015. See 80 Fed. Reg. 23644 (Apr. 28, 2015). The major changes in the revised LEA MOE regulations include: (1) clarification of the eligibility standard; (2) clarification of the compliance standard; (3) explanation of the Subsequent Years rule; and (4) specification of the consequences for an LEA's failure to maintain effort. In conducting its monitoring, OSEP reviewed State procedures that were in effect prior to July 1, 2015. Therefore, the "Finding" and "Citation" sections of the enclosure include citations to the provisions in EDGAR in 34 CFR Parts 74 and 80, prior OMB Circulars A-87 and A-133, and the LEA MOE regulations in effect prior to July 1, 2015. However, because the "Further Action Required" section of the enclosure addresses corrective actions the LEA must take after July 1, 2015, that section includes citations to the Uniform Guidance and the revised LEA MOE regulations.

Please note the following abbreviations are used in the Fiscal Monitoring Instrument:

AMI – The American Recovery and Reinvestment Act (ARRA) of 2009 Monitoring Inventory

CrEAG – Critical Elements Analysis Guide

Department – U.S. Department of Education

EDGAR – Education Department General Administrative Regulations

FFY – Federal fiscal year

FS – fiscal systems element of the CrEAG

GEPA – General Education Provisions Act

LEA – local educational agency

MFS – maintenance of financial support

SEA – State educational agency

**IDEA Part B  
Summary of Monitoring Criterion**

**Monitoring Area 1, IDEA Part B: Obligation/Liquidation**

<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.	Yes	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:** Criterion 1.1: Based on the review of documents, analysis of data, and interviews with State personnel on July 21, 2015 and February 16, 2016, OSEP finds that the State does not have procedures to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with the IDEA. First, while the State required some of the individual assurances, the State was not ensuring that each LEA had submitted a plan that provides assurances to the SEA that the LEA meets each of the conditions in 34 CFR §§300.201 through 300.213 as part of its determination that an LEA is eligible for an IDEA Part B subgrant. Specifically, the State did not require assurances for all of the conditions in 34 CFR §§300.202, 300.206, 300.208, 300.209, 300.212,

and 300.213. Further, the State did not require LEAs to submit assurances annually. Second, the State does not have procedures in place to allocate the IDEA section 611 and section 619 subgrants to eligible LEAs in accordance with the required formula in 34 CFR §§300.705 and 300.816. The SEA reported that in 2014 the State identified noncompliance in its base payment adjustment procedures and developed revised allocation procedures to address the noncompliance. OSEP has reviewed the revised procedures and discussed them with the State on February 16, 2016. However, the written procedures are not consistent with the procedures described by the State during this discussion, or with the required formula in 34 CFR §§300.705 and 300.816. For example, the State reported that when a new LEA is created and serves children with disabilities who have not previously been served by an LEA, the SEA modifies the base payment proportionally for all LEAs in the State. This is inconsistent with 34 CFR §§300.705(b)(2)(i) and 300.816(b)(1) for two reasons: (1) base payment adjustments must be made if a new LEA is created, regardless of whether the new LEA serves children with disabilities who have not previously been served by an LEA; and (2) the State must divide the base allocation for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21 under the IDEA section 611 and ages three through five under the IDEA section 619 currently provided special education by each of the LEAs. In addition, if an LEA is entitled to an adjustment of the allocation it receives under 34 CFR §§300.705(b) or 300.816 as the result of an audit finding, data correction, or the actual enrollment of new and expanding charter schools, the SEA does not adjust the LEA's allocation if the amount of the adjustment does not meet a threshold amount and the SEA has not already reserved the maximum amount of State set-aside funds.<sup>1</sup> OSEP will continue to work with the SEA to resolve its allocation procedures.

**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 [IDEA] 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 eligible 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 eligible LEAs in accordance with the required formula in 34 CFR §300.816. Under 34

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<sup>1</sup> In addition, USOE reported that it does not adjust the LEA's allocation if Utah receives supplemental IDEA Part B funding in addition to its annual IDEA Part B grant, if the amount of the adjustment does not meet the threshold amount and the SEA has not yet reserved the maximum amount of State set-aside funds. To the extent that the supplemental funding to Utah is the result of a distribution by the Secretary of Education to all other States of an amount by which a State's IDEA section 611 allocation is reduced based on its failure to maintain State financial support, USOE must allocate the funds it receives under such a distribution to all eligible LEAs in accordance with 34 CFR §300.705(b). *See Consolidated Appropriations Act, 2016, P.L. 114-113, 129 Stat. 2242, 2632–33; Consolidated and Further Continuing Appropriations Act, 2015, P.L. 113-235, 128 Stat. 2130, 2498–99.* However, if the supplemental funding to Utah is not the result of such a distribution, USOE has discretion to set aside all or a portion of the supplemental funds for State administration or other State-level activities, but only to the extent that USOE has not already reserved the maximum amount of State set-aside funds.

CFR §§300.705(b)(2)(i) and 300.816(b)(1), if a new LEA is created, the State must divide the base allocation determined under 34 CFR §§300.705(b)(1) or 300.816(a) for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 21 (34 CFR §300.705(b)(2)(i)) or ages three through five (34 CFR §300.816(b)(1)), as applicable, currently provided special education by each of the LEAs. In addition, the requirements for allocating Federal funds to new and significantly expanding charter schools are detailed in 34 CFR §§76.791–76.794 and in the Department’s December 2000 guidance titled “How Does a State or Local Educational Agency Allocate Funds to Charter Schools that are Opening for the First Time or Significantly Expanding their Enrollment?” (Department 2000 Guidance) at <https://www2.ed.gov/policy/elsec/guid/cschoools/cguidedec2000.pdf>. When making base payment adjustments for new or significantly expanding charter school LEAs, States must use the method described in 34 CFR §§300.705(b)(2)(i) and 300.816(b)(1) for sections 611 and 619 funds, respectively, for making base payment adjustments when new LEAs are created. See Responses to Questions 78–80 in the December 2000 Guidance.

**Further Action Required:** Within 90 days of the receipt 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 allocate the IDEA sections 611 and 619 subgrants to eligible LEAs in accordance with 34 CFR §§300.705(b) and 300.816, 34 CFR §§76.791 through 76.794, and the December 2000 Guidance, in subsequent years;
3. Documentation of the amount of the base payment that each LEA was entitled to receive in FFYs 2014, 2015 and/or 2016 based on the requirements in 34 CFR §§300.705(b)(2) and 300.816(b);
4. For any LEA whose base payment was less than the amount to which it was entitled in FFYs 2014, 2015 and/or 2016, a calculation of the difference between the amount the LEA actually received and the amount of the base payment the LEA should have received;
5. Documentation demonstrating that any LEA that received a base payment in FFYs 2014, 2015 and/or 2016 that was less than the amount of IDEA sections 611 or 619 funds to which it was entitled was made whole, or a plan outlining how the State will make these LEAs whole during FFY 2016. The State may use any remaining FFY 2014, 2015 and/or 2016 sections 611 and/or 619 State set-aside funds for this purpose; and

6. 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 (formerly OMB Circular A-133)<sup>2</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 2, IDEA Part B: Use of Funds**

<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<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.	No	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.	No	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)

<sup>2</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: None.

### 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 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 Number	Description	Noncompliance identified?	Applicable Requirement
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: Based on a review of documents, analysis of data, and interviews with State personnel on December 21, 2015, OSEP finds that USOE does not have procedures for calculating State MFS for special education and related services for children with disabilities that are consistent with the requirements of IDEA. Specifically, the State reported that, when it first reports MFS data for a given fiscal year in Section V of the annual IDEA Part B application, it includes a “reasonable approximation” of the amount budgeted by State agencies other than the SEA for special education and related services. When the State reports MFS data for that same fiscal year in Section V of the following year’s annual IDEA Part B application, USOE revises the data to include actual expenditures 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. See OSEP Memorandum 10-5, Maintenance of State Financial Support under the Individuals with Disabilities Education Act, December 2, 2009 at <http://www2.ed.gov/policy/speced/guid/idea/monitor/mfs-12-2-2009.pdf>. OSEP recognizes that some State agencies, other than the SEA, may not have a mechanism to determine the actual amounts made available for special education and related services for children with disabilities. As a result, OSEP has accepted the use of actual expenditures on special education and related services for children with disabilities by State agencies other than the SEA as a reasonable approximation of the amounts made available. However, States must use either the actual expenditures, or the actual amounts made available, by the other State agencies for special education and related services, and may not use an approximation of the amount budgeted by the other State agencies for that purpose.

**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, or, if unable to identify the actual amount made available by State agencies other than the SEA, a reasonable approximation of that amount based on the actual expenditures for special education and related services by the other State agencies;

2. Either an assurance that the data submitted in Section V of the State's FFYs 2015 and 2016 annual IDEA Part B applications were 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 Subpart F of the Uniform Guidance (former OMB Circular A-133), of this finding of noncompliance and OSEP's required corrective actions.

## 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.