

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

Virgin Islands Department of Education (VIDE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored VIDE'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

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 the telephone interview conducted on January 20, 2015, the State reported that, while it 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. Specifically, the State did not require assurances for all of the conditions in 34 CFR §§300.201, 300.204-300.206, and 300.208-300.213.

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.

Further Action Required: Subsequently, on December 14, 2015, the State provided a copy of the Virgin Islands' 2015 LEA Application for IDEA Part B funds that demonstrates the State corrected the identified noncompliance.

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: During the telephone interview conducted on January 20, 2015, the State reported that it does not have any 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>.

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 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),¹ 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

¹ 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.

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
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.	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.	No	34 CFR §300.203(b)

Finding: Criterion 4.1: Based on the review of documents, analysis of data, and interviews with State personnel on July 16, 2013 and November 12, 2013, OSEP finds that VIDE 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 calculation submitted by VIDE appeared to account for some funds more than once. VIDE submitted a waiver request for State fiscal year (SFY) 2012 on

December 11, 2013, and additional information about its calculation on February 25, 2014. OSEP continues to work with VIDE as part of the waiver request.

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>.

Further Action Required: The State submitted information, including in its December 2013 request for a waiver of the State MFS requirement for SFY 2012 under 34 CFR §300.163, that the State may have failed to meet the State MFS requirement in SFY 2012. OSEP will address this finding under separate cover in response to the State’s waiver request.

Finding: Criteria 4.2 and 4.3: Based on the review of documents, analysis of data, and interviews with State personnel on January 20 and March 10, 2015, OSEP finds that VIDE does not have procedures for ensuring, as part of its determination that an LEA is eligible for a Part B IDEA subgrant, that each LEA has met the eligibility standard for maintenance of effort (MOE), as provided in 34 CFR §300.203(b). OSEP also finds that VIDE does not have procedures for ensuring, as part of its determination whether an LEA is in compliance with the requirements to maintain effort in 34 CFR §§300.203 through 300.205, that each LEA expends at least the same amount as it expended in a prior year for the education of children with disabilities, unless the LEA has any allowable exceptions or an adjustment. Specifically, the SEA reported that it is responsible for completing the LEA MOE calculation to determine whether an LEA has met the eligibility standard and the compliance standard, but was unable to provide evidence that it completes the calculation or explain the SEA’s procedures for completing the calculation. In addition, the SEA’s written policies are not consistent with the requirements. For example, the SEA’s policies prohibit LEAs that do not meet the requirements of Part B from reducing effort using the exceptions under 34 CFR §300.204.

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. Under the compliance standard in 34 CFR §300.203, an SEA must determine that an LEA spends, for the education of

children with disabilities, at least the same total or per capita amount of local, or State and local, funds as it spent for that purpose from the same source in the preceding fiscal year, except as provided in 34 CFR §§300.204 and 300.205. If an LEA relies on local funds only to meet the compliance standard, the LEA must spend, 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, consistent with 34 CFR §300.203(b)(2).

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 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);²
- 2) Revised State policies and procedures that demonstrate the SEA will ensure that each LEA expends at least the same amount of local or State and local funds, on a total or per capita basis, for the education of children with disabilities as it expended from the same source during the preceding fiscal year, unless the LEA has allowable exceptions or adjustments, consistent with 34 CFR §§300.203(b), 300.204 and 300.205.³
- 3) A copy of the correspondence in which the State has informed its State audit office that is responsible for conducting audits in accordance with the Single Audit Act and Subpart F of the Uniform Guidance (former OMB Circular A-133), of this finding of noncompliance and OSEP's required corrective actions.

Within 30 days of OSEP's notification to the State that it has approved the revisions made to the policies and procedures, the State must provide documentation that it has notified the LEAs of the revisions.

² 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). 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. No changes were made to 34 CFR §300.205.

³ See footnote 3. The final regulations clarify that an LEA meets the compliance standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from local or State and local funds, on a total or per capita basis, below the level of those expenditures from the same source for the preceding fiscal year, except as provided in §§300.204 and 300.205. Under both the prior and new LEA MOE regulations, States must ensure LEAs are in compliance with the requirement to maintain effort.

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.