

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

## Maine Department of Education (MDE)

### Scope of Review:

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

<b>Monitoring Area 1, IDEA Part B: Obligation/Liquidation</b>			
<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 <sup>1</sup>	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

<sup>1</sup> In addition to the finding under Criterion 1.1 in this fiscal monitoring instrument (FMI), in Findings 11-1201-01, 12-1201-04, and 13-1201-01 in the State's FFY 2013 single State audit, the auditor found that MDE used the wrong enrollment data to allocate the population and poverty payments of the IDEA section 619 subgrants to LEAs. Specifically, MDE allocated base payments under section 619 using child count data from 1998, instead of the child count conducted on December 1, 1996. In addition, MDE used data on five-year-old children enrolled in public and private elementary and secondary schools rather than data on all children enrolled in public and private elementary and secondary schools, which may have resulted in LEAs not receiving the amount of regular and American Recovery and Reinvestment Act of 2009 (ARRA) IDEA section 619 Preschool Grant funds that they were entitled to receive under 34 CFR §300.816. In a program determination letter (PDL) dated September 12, 2014, the Office of Special Education and Rehabilitative Services (OSERS) sustained the auditor's findings and required additional corrective actions. OSERS will determine whether the State has completed all required corrective actions and address it under separate cover.

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

Criterion Number	Description	Noncompliance identified?	Applicable Requirements
<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: During the AMI telephone interviews conducted on November 30, 2011 and December 2, 2011, and an additional conversation on July 14, 2014, the State reported that under its current allocations, Child Development Services (CDS), while receiving an IDEA section 619 subgrant, was not receiving an IDEA section 611 subgrant. As reported by MDE staff, CDS met the definition of an intermediate educational unit (IEU) in section 602(23) of the IDEA as in effect prior to June 4, 1997. Therefore, CDS met the definition of an educational service agency (ESA) in 34 CFR §300.12(c), and, as a result, constitutes an LEA, which is defined in 34 CFR §300.28(b) as including an ESA. MDE staff also indicated that, under Maine Unified Special Education Regulation (05-071 Chapter 101), CDS is the IEU responsible for the provision of services to preschool children with disabilities aged 3 through 5. Under 34 CFR §300.705(a), States must provide section 611 subgrants to LEAs that have established eligibility under section 613 of IDEA (34 CFR §300.200). Therefore, because CDS fell within the definition of an LEA in 34 CFR §300.28, and established eligibility under section 613, the State must distribute section 611 funds to CDS in accordance with the formula in 34 CFR §300.705(b), as well as section 619 funds in accordance with 34 CFR §300.816.

**Citation:** 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 §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 for use in accordance with Part B of the Act.

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

1. Documentation of the amount of FFY 2014 and FFY 2015 section 611 funds that CDS was entitled to receive in FFY 2014 and FFY 2015, respectively, and the amount of FFY 2014 and FFY 2015 section 611 funds that CDS actually received in FFY 2014 and FFY 2015, respectively;
2. Documentation demonstrating that CDS received the FFY 2014 and FFY 2015 section 611 funds to which it was entitled, or a plan outlining how the State will make CDS whole during FFY 2015. If the State submits a plan, it must submit to OSEP, within 90 days of its allocation of FFY 2015 section 611 funds, evidence demonstrating CDS was made whole. The State may use any remaining FFY 2014 or FFY 2015 section 611 and/or section 619 State set-aside funds for this purpose;

3. Revised State policies and procedures that demonstrate the SEA will allocate the IDEA section 611 subgrants to all eligible LEAs, including CDS, in accordance with 34 CFR §300.705(a) beginning in FFY 2016; and
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)<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 CDS of the revisions.

<b>Monitoring Area 2, IDEA Part B: Use of Funds</b>			
<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.	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.	Yes	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

<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.

## Monitoring Area 2, IDEA Part B: Use of Funds

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
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 AMI telephone interviews conducted on November 30, 2011 and December 2, 2011, the State reported that it 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>.

**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), 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 2.3: During the AML telephone interviews conducted on November 30, 2011 and December 2, 2011, the State reported that it did not ensure that LEAs spent the required amount of ARRA IDEA Part B funds on providing special education and related services to parentally-placed private school children with disabilities. Since the ARRA IDEA Part B funds were a supplemental appropriation to the FFY 2009 IDEA Part B funds, the State should have ensured that each LEA spent the required amount of its FFY 2009 section 611 and section 619 IDEA Part B subgrant (the regular IDEA allocation plus the ARRA IDEA allocation) on providing special education and related services to parentally-placed private school children with disabilities.

**Citation:** IDEA Part B requires that subgrantees calculate and spend a proportionate share of their IDEA sections 611 and 619 subgrants on parentally-placed children in private schools, after timely and meaningful consultation with representatives of private schools and representatives of parents of parentally-placed private school children with disabilities. See 34 CFR §§300.133, 300.134(b), and Appendix B of the IDEA Part B regulations. The calculation must include the annual count of the number of parentally-placed children with disabilities attending private schools located in the LEA. Further guidance explaining this computation is available in Appendix B and also on the following website: <http://www2.ed.gov/about/offices/list/oii/nonpublic/programs2.html>. As part of its general supervisory responsibilities under 34 CFR §§300.149 and 300.600, the SEA must ensure that each LEA spends the required amount on providing special education and related services to parentally-placed private school children with disabilities in accordance with the requirements in 34 CFR §300.133 and Appendix B.

**Further Action Required:** Because there is currently no IDEA Part B supplemental appropriation, no corrective action is required at this time. If there are any supplemental appropriations in the future, OSERS will work with the State to ensure that LEAs are informed about how to calculate the proportionate share in those circumstances.

<b>Monitoring Area 3, IDEA Part B: ARRA</b>			
<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<b>Criterion 3.1</b>	The SEA ensures that infrastructure investments are properly certified and posted.	No	ARRA §1511
<b>Criterion 3.2</b>	The SEA has procedures to ensure that LEAs comply with the "Buy American" requirements.	No	2 CFR §§176.60-176.170
<b>Criterion 3.3</b>	The SEA has procedures to ensure that LEAs comply with the prevailing wage requirements.	No	2 CFR §§176.180, 176.190

## Monitoring Area 3, IDEA Part B: ARRA

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
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 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 AMI telephone interviews conducted on November 20, 2011 and December 2, 2011, the State reported that it did not have procedures to calculate the amount of State financial support made available for special education and

related services. Therefore, and as a result of an audit report titled “Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds” issued by the Department’s Office of Inspector General (ED OIG/A09-L0011), OSEP staff conducted additional phone conversations and exchanged emails with the State between 2011 and 2013, regarding its procedures for calculating the amount of State financial support made available for special education and related services. During those phone conversations, MDE reported the following information:

1. Initially, MDE staff reported that they calculated the amount of the MOE reduction that each eligible LEA could take for State fiscal year (SFY) 2009 under the MOE adjustment provision in 34 CFR §300.205, and aggregated those amounts. The State then took the amount of the aggregated MOE reduction on behalf of the LEAs, and applied the reduction at the State level to lower its required amount of State financial support made available for special education and related services. OSEP informed the State that this was unallowable because only eligible LEAs may apply the LEA MOE adjustment provision in 34 CFR §300.205; the LEA MOE adjustment provision does not apply to SEAs.
2. Thereafter, the State reported that it exercised the SEA flexibility in 34 CFR §300.230 for SFY 2009. OSEP informed the State that because it received a “needs assistance” determination under section 616 of the IDEA in the previous year, it was not eligible to exercise the flexibility. See 34 CFR §300.230(b).
3. The State reported that it treated State Fiscal Stabilization Funds (SFSF) as State funds for the purpose of calculating the amount it made available for the maintenance of State financial support (MFS) for SFY 2009. OSEP determined that the State had done so properly.

Although the Department calculated the amount that the State made available for MFS in SFY 2009 using the data that the State provided, the conflicting information reported by the State during this process indicates that the State did not have an adequate system to calculate the amount of State financial support made available 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:** Within 90 days from the date of this letter, the State must submit to OSEP:

1. Procedures and documentation demonstrating that it has a reasonable method to calculate the amount of State financial support made available for special education and related services, consistent with 34 CFR §300.163(a);
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

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.

<b>Monitoring Area 5, IDEA Part B: Procurement, Property, and Record Retention</b>			
<b>Criterion Number</b>	<b>Description</b>	<b>Noncompliance identified?</b>	<b>Applicable Requirement</b>
<b>Criterion 5.1</b>	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
<b>Criterion 5.2</b>	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
<b>Criterion 5.3</b>	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
<b>Criterion 5.4</b>	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)
<b>Criterion 5.5</b>	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
<b>Criterion 5.6</b>	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