

Office of Special Education Programs (OSEP) Fiscal Monitoring Instrument

Oregon Department of Education (ODE)

Scope of Review:

The Office of Special Education Programs (OSEP) monitored ODE'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.	N	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.	N	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.	N	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.	N	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.	N	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.	N	34 CFR §80.21(c)&(i)

Finding: None

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.	N	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.	N	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.	N	34 CFR §300.133
Criterion 2.4	The SEA has procedures to provide an approved restricted indirect cost rate (RICR) for its LEAs.	N	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.	N	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.	N	34 CFR §§76.799, 300.209(b)

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.	N	ARRA §1511
Criterion 3.2	The SEA has procedures to ensure that LEAs comply with the "Buy American" requirements.	N	2 CFR §§176.60-176.170

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
Criterion 3.3	The SEA has procedures to ensure that LEAs comply with the prevailing wage requirements.	N	2 CFR §§176.180, 176.190
Criterion 3.4	The SEA has procedures to ensure that it prevents and detects fraud, waste, and abuse.	N	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.	Y	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.	N	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.	N	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.	Y	34 CFR §300.203(b)

Finding: Criterion 4.1: In a March 8, 2011 letter to the Department, Oregon requested a waiver of the requirement in 20 U.S.C. §1412(a)(18)(A) and 34 CFR §300.163(a) to maintain State financial support for special education and related services. In that letter, the State reported that it made available \$349,984,489 for special education and related services in SFY 2010 and \$334,309,910 for that same purpose in SFY 2011. Thereafter, the State provided revised data and information regarding the amount of State financial

support made available for special education and related services in SFYs 2010 and 2011. The State reported that it made available \$351,663,393 in SFY 2010 and \$351,717,563 in SFY 2011.

On May 5, 2013, in Section V of Oregon's FFY 2013 Annual State Application under Part B of the IDEA, Oregon reported that it made available \$347,417,332 for special education and related services in SFY 2011, an amount that is not consistent with the amount Oregon reported to the Department in 2011. Because the amount Oregon reported that it made available in SFY 2011 (\$347,417,332) is less than the amount the State reported that it made available in SFY 2010 (\$351,663,393), in a letter dated June 25, 2013, OSEP identified a potential failure to maintain State financial support for special education and related services for children with disabilities in SFY 2011.

Thereafter, on August 20, September 17, November 5 and December 3, 2013 OSEP and the State discussed this matter. In addition, on July 25, August 27, November 4, and December 2, 2013, Oregon submitted additional information and data. Based on this information, OSEP finds that Oregon did not have procedures in place to calculate the amount of State financial support for special education and related services for children with disabilities for SFY 2011 that were consistent with IDEA because the State included in its calculation for that year State financial support that was not 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.

Further Action Required: On September 27, 2013, Oregon submitted revised certified data for SFYs 2010, 2011 and 2012 and supporting information, which appear to demonstrate that it now has procedures in place to calculate the amount of State financial support for special education and related services for children with disabilities that are consistent with IDEA. No further action is required at this time. However, issues related to whether the State failed to maintain State financial support for special education and related services in SFY 2011, and if so, by what amount, will be addressed in a separate letter.

Finding: Criterion 4.4: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that, at the time of the AMI telephone interview conducted on July 13, 2011, and confirmed in a telephone interview conducted on February 12, 2014, when determining whether an LEA was eligible for a Part B IDEA subgrant and when determining whether the LEA was in compliance with the requirement to maintain effort in 34 CFR §300.203, the State did not permit the LEA to demonstrate that it had met either standard based on a comparison of local funds only on a total or per capita basis, consistent with 34 CFR §300.203(a) and (b)(1)(i).¹

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

¹ OSEP initially identified this issue in its Verification visit letter, dated February 1, 2011. See: <http://www2.ed.gov/fund/data/report/idea/partbvvltr/index.html#or>.

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). The SEA must provide LEAs the opportunity to meet the eligibility and the compliance standards based on a comparison of: (1) State and local funds on a total basis; (2) State and local funds on a per capita basis; (3) local funds only on a total basis; or (4) local funds only on a per capita basis, consistent with 34 CFR §300.203(a) and (b)(1)(i).

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 permit LEAs to demonstrate that they meet their MOE obligation (both eligibility and compliance) based on a comparison of local funds only, on a total or per capita basis, consistent with 34 CFR §300.203(a) and (b)(1)(i);
2. An assurance that the State will not take any recovery actions against an LEA, or deny an LEA eligibility for IDEA funds, due to an LEA's failure to maintain effort as required by 34 CFR §300.203, unless the LEA was provided an opportunity to demonstrate that it met its MOE obligation based on a comparison of local funds only on a total or per capita basis; 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 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 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.	N	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.	N	34 CFR §300.718

Criterion Number	Description	Noncompliance identified?	Applicable Requirement
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.	N	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.	N	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.	N	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.	N	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.	Y	34 CFR §§80.26, 80.40, 300.149, 300.600

Finding: Criterion 6.1: Based on the review of documents, analysis of data, and interviews with State personnel, OSEP finds that, at the time of the AMI telephone interview conducted on July 13, 2011, and confirmed in a telephone interview conducted on February 12, 2014, the State relies on A-133 audits as its sole mechanism to monitor its subgrantees, or LEAs, to ensure compliance with applicable Federal fiscal requirements, including the time and effort, procurement, physical inventory of property, debarment and suspension, and the financial and programmatic record retention requirements, of Part B of the IDEA and EDGAR, as required under 34 CFR §§80.26(b)(2), 80.40(a), 300.149, and 300.600. Furthermore, the State reported that, for those LEAs that did not receive A-133 audits, the State has no mechanism in place to monitor those LEAs to ensure compliance with applicable Federal fiscal requirements, including those noted above, of Part B of the IDEA and EDGAR, as required under 34 CFR § 80.26(b)(2). Based on this information, OSEP has determined that the State does not have a system reasonably designed to ensure that LEAs comply

with the fiscal requirements applicable to Part B of the IDEA, as required under 34 CFR §§ 80.26(b)(2), 80.40(a), 300.149, and 300.600.

Citation: Under 34 CFR §80.26(b)(2), the State must determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), OMB Circular A-133, or through other means (e.g., program reviews) if the subgrantee has not had such an audit. In addition to the requirement in 34 CFR §80.26(b)(2), under 34 CFR §§80.40(a), 300.149, and 300.600, the State must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements, including fiscal requirements. Accordingly, while a State has flexibility to determine the methods it uses to conduct subrecipient monitoring, a State must have a system reasonably designed to ensure that LEAs comply with fiscal requirements applicable to Part B of the IDEA.

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

1. Revised policies and procedures for fiscal monitoring consistent with the requirements of IDEA and EDGAR: 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 OMB Circular A-133, of this finding of noncompliance and OSEP's required corrective actions.

With the FFY 2014 APR, due February 1, 2016, the State must provide evidence that it has implemented the fiscal monitoring procedures.