OSEP Part B Regulations
Regional Implementation Meetings

Fiscal Accountability

U.S. Department of Education
Office of Special
Education Programs

No Child
LEFT BEHIND℠

Agenda

- OSEP fiscal monitoring
- State distribution of funds, including to charter schools
- Maintenance of effort
- Early intervening services funds
- Timely liquidation

OSEP Fiscal Monitoring

Process

- Part of OSEP's verification process
- Desk audit document shared with states prior to the visit
- Primarily IDEA requirements but some from EDGAR [Education Department General Administrative Regulations]

Content

- Distribution of funds
- Use of funds
- Monitoring the use of funds

Distribution of Funds

- Distribution of funds (34 CFR §§300.704-300-705; 300.812-300.817)
- High risk pool (34 CFR §300.704(c))
- Charter schools (34 CFR §300.209)

Distribution of Funds

- Children placed in private schools by their parents (34 CFR §300.133)
- Least restrictive environment (LRE) (funding mechanisms) (34 CFR §300.114)

Use of Funds

- Maintenance of state financial support (34 CFR §§300.163-300.164)
- Local educational agency (LEA) maintenance of effort (34 CFR §§300.203—300.204)
- Non-supplanting (state-level) (34 CFR §300.162(c))

Use of Funds

- Excess cost (34 CFR §§300.16 and 300.202)
- Use for allowable costs of special education and related services (34 CFR §300.202)
- Commingling (34 CFR §300.162(b))
- Early intervening services (34 CFR §300.226)

Monitoring the Use of Funds

- A-133 Single Audits
- Interagency agreements
- Timely liquidation
- Monitoring

Funding Basics

Basics of IDEA Formula Grant Funds

- States establish eligibility for funds by submitting an application
- Funds become available for distribution on July 1 and October 1
- Funds are available for OSEP to distribute for 15 months - July 1 to the following September 30 (e.g., FFY 2006 funds are available for OSEP to distribute from 7/1/2006 to 9/30/2007)

Basics of IDEA Formula Grant Funds (cont.)

- Funds are available in the GAPS for states to obligate for 27 months
  - FFY 2006 funds are available to states to obligate from 7/1/2006 to 9/30/2008
- States have from October 1 to December 31 to complete liquidation, then the GAPS closes state access to those funds

Use of Funds: State Level

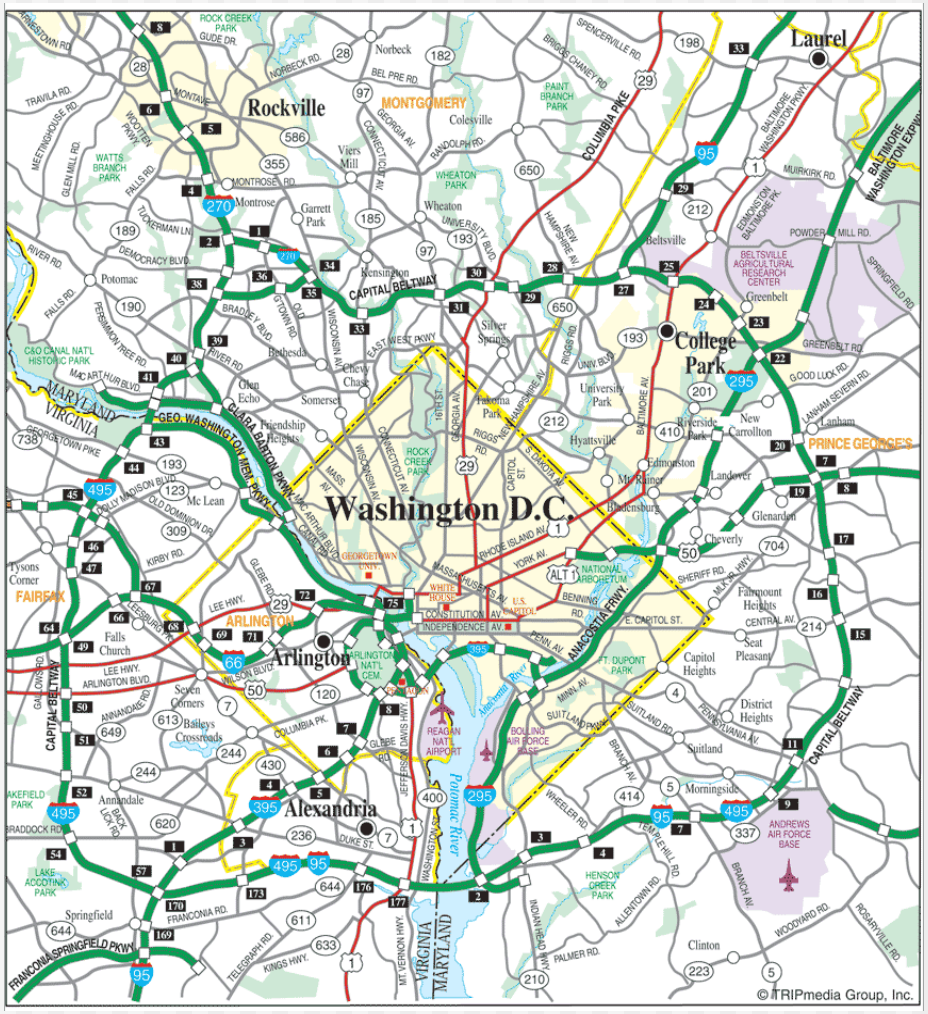
- State administration (34 CFR §300.704(a))
- Other state-level activities (34 CFR §300.704(b)-(f)
- Flow-through to LEAs (34 CFR §300.705)

Distribution of Funds to LEAs

Distribution of Funds to LEAs

- Base amount – A fixed amount to distribute as base payments to LEAs
- Population amount (85% of [total for LEAs minus base])
- Poverty amount (15% of [total for LEAs minus base])

Road Map to 611 LEA Allocations



Charter Schools

Charter Schools

Charter school funding encompasses the interplay of three laws:

- State charter school law
- IDEA and Regulations
- Charter Schools Expansion Act and Regulations

Charter School within LEA

Funds from LEAs—

An LEA that distributes IDEA funds must provide them to its charter schools *on the same basis* as its other public schools, including proportional distribution based on relative enrollment of children with disabilities; and *at the same time* as the LEA distributes other federal funds

34 CFR §300.209(b)

Charter Schools Expansion Act

- Charter school opening
- Significant expansion of enrollment
- Timelines for funding
  - November 1
  - February 1
- Notice and information exchange

Charter Schools Expansion Act

For federal formula grants, states and LEAs must ensure that each eligible charter school that ***opens for the first time or significantly expands its enrollment on or before November 1***, receives the proportionate amount of funds for which it is eligible *within five months* of the date it opens or significantly expands

34 CFR §76.792(a)

Charter Schools Expansion Act

For charters that ***open or significantly expand after November 1 but before February 1***, the charters must receive at least a *pro rata* portion of the proportionate amount of funds for which the charter school is eligible *on or before the date the state or LEA allocates funds to other LEAs and public schools for the succeeding year*

34 CFR §76.792(b)

Charter Schools Expansion Act

For each eligible charter school that opens or significantly expands its enrollment ***on or after February 1***, states and LEAs may, but are not required to, provide the charter school with a *pro rata* portion of the proportionate amount of funds for which the charter school is eligible

34 CFR §76.792(c)

Charter Schools Expansion Act

Significant expansion of enrollment—

means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas

34 CFR §76.787

Charter Schools Expansion Act

Significant expansion of enrollment—

The term also includes any other expansion of enrollment that the state educational agency (SEA) determines to be significant

34 CFR §76.787

Charter Schools Expansion Act

Notice-

In order to receive funds, at least 120 days prior, a charter school must notify the state or LEA of the date the charter school is scheduled to open or to significantly expand its enrollment

34 CFR §76.788

Charter Schools Expansion Act

Exchange of Information--

Upon receiving notice, the state or LEA must provide the charter school with *timely and meaningful information* about any federal funding for which the charter school may be eligible

34 CFR §76.789(a)

Charter Schools Expansion Act

Exchange of Information--

Once a charter school has opened or significantly expanded its enrollment, the charter school must provide actual enrollment and eligibility data to the SEA or LEA at a time the SEA or LEA may reasonably require

34 CFR §76.788(b)(2)

Charter Schools Expansion Act

Exchange of Information--

An SEA or LEA is not required to provide funds to a charter school until the charter school provides the SEA or LEA with the required actual enrollment and eligibility data

34 CFR §76.788(b)(3)

Basic LEA Maintenance of Effort (MOE) Requirement

LEA MOE requirement

With certain exceptions, Part B funds must not be used by an LEA 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 year

LEA MOE (cont.)

LEA application standard:

With certain exceptions, an LEA budgets for the education of children with disabilities, at least the same total or per capita amount of either:

- local funds only; or
- State and local funds

as it spent from those same sources in the most recent prior year for which the information is available

LEA MOE (cont.)

Audit standard:

Compliance with the MOE requirement, after a fiscal year has ended, is based on the actual local or state and local expenditures for special education and related services in the audited year and the prior year

LEA MOE (cont.)

Don’t include as state or local funds any federal funds for which the SEA or an LEA is required to account to the federal government

LEA MOE: Example #1

- In fiscal year (FY) 2005, McKinley LEA spent a total of $100,000 local funds and $900,000 state and local funds on the education of children with disabilities
- For FY 2006, McKinley LEA must spend at least $100,000 of local funds **OR** $900,000 of combined state and local funds for the education of children with disabilities

LEA MOE: Example #1(cont.)

- If McKinley spent $97,000 of local funds and $905,000 of state and local funds on the education of children with disabilities, it would meet its MOE level
- If McKinley's calculation of $905,000 of state and local funds, included $64,000 of ESEA Title 1 funds that it used for services to children with disabilities, it would not have met its MOE level

LEA MOE: Example #2

- In FY 2005, Harrison LEA spent a total of $100,000 local funds and $900,000 state and local funds on the education of children with disabilities
- In FY 2005, Harrison LEA had 150 children with disabilities; in FY 2006 that number drops to 130

LEA MOE: Example #2 (cont.)

- For FY 2006, Harrison LEA must spend at least –
  - $667 per child local funds ($86,710) OR
  - $6000 per child state and local funds ($780,000)

  on the education of children with disabilities

LEA MOE:Example #2 (cont.)

- If in FY 2006 Harrison LEA spent $80,000 in local funds and $800,000 in state and local funds on the education of children with disabilities, it would meet it MOE level

LEA MOE: Exceptions

An LEA may reduce the level of its expenditures below the comparison year if the reduction is the result of:

- Voluntary departure, or departure for just cause, of special education or related services personnel
- Decrease in enrollment of children with disabilities

LEA MOE: Exceptions (cont.)

Termination of an exceptionally costly obligation of the agency to a particular child with a disability because the child:

- Has left the jurisdiction of the LEA
- Has reached the age at which the obligation to provide a free appropriate public education (FAPE) to the child is terminated, or
- No longer needs special education

LEA MOE: Exceptions (cont.)

- Termination of costly expenditures for long-term purchases, such as acquisition of equipment or construction of school facilities
- Assumption of costs by the state's high cost fund

LEA MOE: Basic Requirement Common Problems

LEAs not spending at least as much local, or state and local, funds according to the budget they provided to demonstrate they would meet MOE requirements

LEA MOE: Adjustments

- For any fiscal year that an LEA's allocation exceeds the amount of its prior year's subgrant, the LEA may reduce its expenditure of local or state and local funds by not more than 50% of the increase in federal funds
- The LEA must use an amount of local funds equal to the reduction for activities that could be supported with funds under the ESEA (NCLB)

LEA MOE: Adjustments (cont.)

If an SEA determines that an LEA is unable to establish and maintain FAPE **or** if the SEA has taken action against the LEA under section 616 of the Act and Subpart F of the regulations, the SEA **must** prohibit the LEA from reducing the level of expenditures for that fiscal year

LEA MOE: Adjustment Example

- In year 1, Taft LEA's allocation is $900,000.
- For year 2, Taft's allocation is $1,100,000
- Increase = $200,000
- Maximum Amount of MOE reduction = $100,000

LEA MOE: Adjustments (cont.)

The amount of funds expended by an LEA for early intervening services counts toward the maximum amount of expenditures by which the LEA may reduce local effort

Early Intervening Services (EIS)

An LEA may not use more than 15% of the amount the LEA receives in a given FY, less any amount by which it has reduced its MOE level, if any, in combination with other funds, to develop and implement coordinated, EIS for children in K through grade 12 who are not currently identified as needing special education but who need additional academic and behavioral support to succeed in a general education environment

EIS/MOE: Example 1

- Prior Year's Allocation: $900,000
- Current Year's Allocation: $1,000,000
- Increase: $100,000
- Maximum MOE Reduction: $50,000
- Maximum for EIS: $150,000

EIS/MOE: Example 2

- Prior Year's Allocation $1,000,000
- Current Year's Allocation $2,000,000
- Increase $1,000,000
- Maximum MOE Reduction $500,000
- Maximum for EIS $300,000

EIS/MOE: Example 3

- Prior Year's Allocation $1,000,000
- Current Year's Allocation $1,000,000
- Increase $0
- Maximum MOE Reduction $0
- Maximum for EIS $150,000

EIS/MOE: Decision Issues

- MOE reductions taken will reduce the level of expenditure that an LEA must make for special education in subsequent years
- EIS services may reduce the number of children who need special education in the future, thus reducing future increased costs

EIS/MOE: Decision Constraints

In some cases, SEAs will prohibit an LEA from reducing MOE:

- If the SEA determines that an LEA is unable to establish or maintain FAPE
- If the SEA has taken action against the LEA under section 616 of the Act or Subpart F of the regulations

EIS/MOE: Decision Constraints (cont.)

If the state determines that an LEA has a significant disproportionality based on race or ethnicity with respect to identification as children with disabilities or their placement in particular settings, the SEA **must require** the LEA to reserve the maximum amount of funds for early intervening services

Timely Liquidation

Timely Liquidation

- FFY 2005 funds were distributed to states on July 1, 2005
  - Available to states in GAPS for obligation 7/1/2005 to 9/30/2007
  - GAPS remains open for liquidation to 12/31/2007
  - On or about 1/1/2008, states will no longer be able to draw funds from GAPS

Extensions for Liquidation

- When GAPS is no longer open for liquidation, a state must request permission for GAPS to be opened for "Late Liquidation"
- For 9 months after liquidation closes, that request can be reviewed and approved by OSEP

Extensions for Liquidation (cont.)

- So that means
  - From January 1 to September 30, requests to open the GAPS for late liquidation can be approved in OSEP
  - For FFY 2004 funds, the GAPS closed for liquidation on December 31, 2006
  - If your state has funds remaining from FFY 2004, requests to open GAPS go to OSEP until September 30, 2007

Principles for Approving Late Liquidation Requests

- Submit as close as possible to the expiration of original liquidation period
- Include a clear statement of:
  - The reason for the late liquidation
  - That funds will be used for obligations made within the grant period
  - That funds were used for allowable costs
- Request must come from a cognizant official

After the 9-Month Timeframe

- After the 9 months from close of liquidation, requests for late liquidation go to the Office of the Chief Financial Officer (OCFO)
- Send request to OSEP
- OSEP will forward to the OCFO with a recommendation
- Recommendation will be reviewed by OSERS, OCFO, Deputy Secretary, Under Secretary and the Office of the General Counsel (OGC)

What States Can Do to Help

- Keep in touch with your finance office
  - Are obligations being charged to the correct year's account?
- States should contact LEAs with large available balances of FFY 2005 funds
  - Do the LEAs have a plan for spending all of the funds?
  - If not, will the LEA return the funds to the SEA so they can be reallocated to other LEAs?

Funds Cancelled

- After 5 years from the last date that OSEP can obligate the funds, the funds revert to Treasury
- On October 1, 2007, FFY 2001 funds will revert to Treasury

Contact Information

- Start with your state contact
- Ruth Ryder

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- Suzanne Sheridan, OGC

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