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FINAL MANAGEMENT INFORMATION REPORT

To: Michael Yudin
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Office of Special Education and Rehabilitative Services

From: Patrick J. Howard /s/
Assistant Inspector General for Audit

Subject: Management Information Report on IDEA Maintenance of Effort Flexibility
Control Number ED-OIG/X09N0006

This final management information report (MIR) provides Congress and the U.S. Department of Education (Department), Office of Special Education and Rehabilitative Services (OSERS) with results and suggestions related to our work on maintenance of effort (MOE) flexibility under Part B of the Individuals with Disabilities Education Act (IDEA). The objectives of the MIR are to (1) provide information on specific matters that may warrant consideration when IDEA is reauthorized and (2) identify additional actions that the Department can take to address implementation issues associated with MOE flexibility allowed under IDEA. Unless otherwise stated, we refer to IDEA, Part B as IDEA throughout this report.

The MIR is primarily based on information obtained during the OIG's audit "Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds," Control Number ED-OIG/A09L0011. The audit covered State educational agencies (SEAs) in California, Illinois, Louisiana, Maine, Ohio, and Texas and selected local educational agencies (LEAs) in these States. The audit addressed how those entities administered certain provisions of IDEA and the Department's implementing regulations in response to increased funding awarded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and included entities exercising MOE flexibility in fiscal year (FY) 2009–2010. The final audit report was issued on July 25, 2013.¹ This MIR covers matters that may warrant nationwide attention whereas our audit report was restricted to findings and conclusions associated with a limited number of States.

¹ The report is available on the OIG Web site at <http://www2.ed.gov/about/offices/list/oig/areports2013.html> under the heading Office of Special Education and Rehabilitative Services.

BACKGROUND

According to IDEA §§ 613(a)(2)(A)(ii) and (iii), LEAs that receive IDEA funds must generally use those funds to supplement, not supplant State, local, and other Federal funds. An LEA must also not reduce the level of expenditures it made from local funds to educate children with disabilities below the level of those expenditures for the preceding fiscal year (the LEA MOE requirement). In addition, according to IDEA § 612(a)(17), States that receive IDEA funds must generally use those funds to supplement, not supplant Federal, State, and local funds expended for special education and related services provided to children with disabilities. Also, according to IDEA § 612(a)(18), States must generally not reduce their level of financial support for special education and related services for children with disabilities below the amount of support for the preceding fiscal year.

Notwithstanding the above requirements, eligible LEAs (under IDEA § 613(a)(2)(C)) or SEAs (under IDEA § 613(j)) may respectively reduce the level of local or State expenditures to educate children with disabilities by up to 50 percent of any increase in its annual IDEA, § 611, subgrant or grant allocation. These adjustments to effort (referred to as “flexibility” in this report) were intended to provide LEAs and SEAs with fiscal relief from the costs of local special education programs when they received a significant increase in Federal special education funding.

To be eligible for flexibility under IDEA § 613(a)(2)(C), an LEA must meet requirements under IDEA § 616. Specifically, an LEA (1) must meet the targets in the State’s annual performance plan, (2) maintain programs of free appropriate public education, and (3) not have significant disproportionality (as defined in IDEA § 618(d)). If an SEA determines that an LEA is not meeting requirements, it must prohibit that LEA from exercising flexibility for that fiscal year. An eligible LEA that opts to exercise flexibility and reduce local special education expenditures must spend local funds equal to the amount that it would have spent on special education and related services (referred to as “freed-up funds” in this report) to carry out activities authorized under the Elementary and Secondary Education Act of 1965 (ESEA).

To be eligible for flexibility under IDEA § 613(j), an SEA must (1) pay or reimburse all LEAs within the State, exclusively from State revenue, 100 percent of the non-Federal share of costs of special education programs and related services; (2) establish, maintain, and oversee a program of free appropriate public education; and (3) meet requirements under IDEA § 616(d)(2)(A). According to IDEA § 613(j)(5), an SEA may not exercise flexibility if any LEA in the State would, as a result, not be able to meet the free appropriate public education requirements from the combination of Federal and State funds received. An SEA that exercises flexibility must use funds from State sources, equal to the amount of the reduction, to support activities authorized under the ESEA or to support need-based higher education programs for teachers or students.

If an LEA or SEA reduces spending by exercising flexibility under IDEA §§ 613(a)(2)(C) or 613(j), it may be able to maintain this reduced level of expenditures in subsequent years.² However, States still must ensure that students with disabilities receive a free appropriate public education. An LEA or SEA would be required to increase spending if it could not provide the required educational services to children with disabilities at the reduced spending level.

In 2009, the Department awarded an additional \$11.3 billion in Recovery Act IDEA funds to SEAs, which basically doubled the amount of IDEA funding available when combined with the \$11.5 billion of regular IDEA funds that Congress had already appropriated for that year. The unprecedented increase in IDEA funding presented an opportunity for eligible LEAs or SEAs to exercise flexibility and substantially reduce local expenditures for the education of students with disabilities below the level of those expenditures in the previous year. Before the Recovery Act, LEAs and SEAs generally did not receive increases in Federal funding that would warrant using flexibility. Even though LEAs and SEAs that exercised flexibility in FY 2009–2010 might be able to maintain that reduced level of local spending over many years, the supplemental Recovery Act IDEA funds were available to cover the entities' spending reductions for only a limited time. Recovery Act IDEA funds could be obligated through September 30, 2011.

RESULTS AND SUGGESTIONS

The information presented in this MIR may be useful to Congress and the Department as they carry out their respective policy and oversight responsibilities, particularly since IDEA reauthorization may occur soon. The MIR includes suggestions for Congress and the Department to consider.

Section 1 discusses two issues that may warrant Congressional consideration when IDEA is reauthorized. **Issue 1.1** discusses how LEAs may spend the freed-up State or local funds resulting from exercising flexibility for a broad array of uses authorized under the ESEA. However, without further clarity on what Congress considers meaningful flexibility, LEAs could be spending these funds on activities that Congress had not intended. **Issue 1.2** describes an unintended consequence of a large, one-time IDEA funding increase in which LEAs may reduce the amount they invest in local special education programs beyond the time frame in which the supplemental Federal funding is available. Under this scenario, once the Federal grant allocation returns to its normal amount 1 to 2 years after the one-time Federal increase, the total amount invested (Federal, State, and local) in local special education programs could be significantly reduced for many years unless LEAs voluntarily restore prior local spending levels or cannot provide the required educational services to children with disabilities at the reduced spending level.

² The Conference Report for the IDEA Improvement Act of 2004, H. Rept. 108-779, p. 197, states: "The Conferees intend that in any fiscal year in which the local educational agency or State educational agency reduces expenditures pursuant to section 613(a)(2)(C) or section 613(j), the reduced level of effort shall be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year."

Section 2 discusses six issues related to the Department's administration and implementation of the flexibility provision and related IDEA provisions. Our prior audit report discussed two of these as pervasive compliance issues in selected States; we are addressing them in this report on a nationwide basis. **Issue 2.1** discusses the lack of oversight by SEAs in monitoring how LEAs were using freed-up funds or ensuring that LEAs were appropriately accounting for these funds. SEAs and LEAs each play important roles in ensuring that LEAs use freed-up funds appropriately when LEAs exercise flexibility. **Issue 2.2** discusses the importance of SEAs and LEAs fully understanding the relationship between flexibility and voluntary coordinated early intervening services (CEIS) so that LEAs do not improperly spend excessive IDEA funds on CEIS when also exercising flexibility. When LEAs overspend on CEIS after exercising flexibility, the total amount spent on special education programs and services is less than required, resulting in a violation of IDEA's MOE requirement.

Our prior audit helped us identify additional issues and concerns that warrant Department action. **Issue 2.3** describes our concerns with the Department's lack of action in correcting or disclosing deficiencies in flexibility, voluntary CEIS, and other information posted on a public Web site. Accurate data is needed to properly inform the public and Congress about important issues such as how extensively flexibility was used as a result of the Recovery Act or the amounts of local special education program spending reductions that occurred in a State or across the nation. Without full disclosure of known data limitations, interested parties are probably not aware of the weaknesses in the data. Our report also addresses two areas where SEAs can vary the measures used to assess LEAs, which may undermine program goals. **Issue 2.4** discusses a situation where SEAs are allowed to individually establish how they arrive at LEAs' annual performance results, which can lead to inequitable results for LEAs in one State versus another in the same or similar circumstances. **Issue 2.5** discusses the adverse effects that may result when an SEA does not establish a meaningful threshold for significant disproportionality. Finally, as discussed in **Issue 2.6**, LEAs were not always aware of their flexibility eligibility status or the full extent to which they could reduce local spending.

We provided a draft of this report to the Office of Special Education and Rehabilitative Services (OSERS) on April 23, 2014. OSERS provided its comments to specific issues within the draft report on May 30, 2014. In its response, OSERS

- proposed several wording changes and clarifications, including information related to SEA flexibility, in the Background section,
- recommended revisions to our description of SEA flexibility in Issue 1.2,
- described the actions that it or OSEP has taken or plans to take in relation to several of the issues and suggestions in Section 2, and
- recommended wording changes to Issue 2.4 and Issue 2.5.

The full text of OSERS' comments is included as an attachment to this report. In response to OSERS' comments, we revised or clarified the Background section where appropriate. We did not materially modify any of our issues or suggestions as a result of OSERS' comments. We summarize OSERS' comments on issues and suggestions at the end of each issue and provide our response if warranted.

Section 1 – Matters to Consider During IDEA Reauthorization

Issue 1.1 – Allowable Uses of Freed-Up Funds

Under current law and regulations, when an eligible LEA exercises flexibility to reduce local special education spending, it must spend the resulting freed-up funds to carry out activities authorized under the ESEA. Given the legislative history of the flexibility provision, however, the full scope of allowable uses of freed-up funds is not clear.

OSERS Recovery Act Guidance stated that freed-up funds may be used for any activities allowed under the ESEA, including those activities associated with the Impact Aid program.³ Of all the programs contained in the ESEA, Impact Aid offers the most flexibility in how LEAs can spend funds. The Impact Aid program is intended to assist LEAs that have lost property tax revenue due to the presence of tax-exempt Federal property, such as military bases, or that have experienced increased expenditures due to the enrollment of federally connected children, such as the children of military personnel. Most Impact Aid funds are considered general aid to the recipient LEAs, which means these funds can be spent in whatever manner LEAs choose in accordance with local and State requirements. The Impact Aid program also provides for payments to LEAs that need assistance with construction activities, such as emergency repairs or the modernization of school facilities. Thus, if used to support activities authorized under Impact Aid, LEAs may use freed-up funds resulting from flexibility for costs associated with educational, general, and construction activities.

While using freed up funds for non-educational purposes under Impact Aid is authorized given the plain language of the flexibility provision, it is not clear whether Congress intended for freed-up funds to be so unrestricted. The Conference Report for the 2004 IDEA reauthorization⁴ stated that LEAs should have meaningful flexibility in the use of local freed-up funds that result from a spending reduction under the flexibility provision and should not have to use these funds for programs exclusively authorized under the ESEA. The report noted, however, that most State and local education programs are consistent with the broad flexibility that Section 5131 of ESEA, concerning Local Innovative Education Programs, provides. Under this section, LEAs have broad discretion to determine how to allocate certain ESEA funds among one or more of 27 statutorily listed program areas. Unlike this flexibility under the IDEA, however, flexibility under Section 5131 is constrained by those 27 program areas, statutory requirements to plan and account for such expenditures, and a requirement that the LEA use such funds only to meet educational needs within the schools the LEA serves. In addition, Section 5131 allocations must be tied to promoting challenging academic achievement standards, used to improve student academic achievement, and be part of an overall education reform strategy. The Conferees' comparison of allowable uses of freed-up funds resulting from flexibility to allowable uses of funds under Section 5131 of the ESEA, creates ambiguity as to whether Congress expected freed-up funds resulting from flexibility to be used for non-educational purposes. Without further clarity on what Congress considered meaningful flexibility in LEAs' use of freed-up

³ The Impact Aid program is authorized in Title VIII of ESEA.

⁴ H. Rept. 108-779, page 197 (November 17, 2004).

funds, LEAs could be spending freed-up funds resulting from the use of flexibility on activities that Congress had not intended.

Suggestion for Reauthorization

1.1 Congress could clarify allowable uses of freed-up funds, including whether general and construction activities under the Impact Aid program are appropriate. To the extent that Congress intended that LEAs use freed-up funds for educational activities, not general support, Congress could establish statutory requirements like those for Local Innovative Education Programs under Section 5131 of the ESEA to ensure that LEAs exercise flexibility consistent with program goals.

OSERS Comments

OSERS had no comments on Issue 1.1.

Issue 1.2 – Reduced Baseline Spending

Substantial, one-time IDEA funding increases such as the Recovery Act may result in unintended reductions in the total amount invested in special education programs. When IDEA was being considered for reauthorization in 2003, Congress intended to alter the existing cost-sharing arrangement for special education programs within 7 years by incrementally increasing the amount of Federal funds appropriated each year to assist States and LEAs with the additional costs of educating students with disabilities.⁵ In conjunction with these increases, SEAs and/or LEAs could reduce their level of spending by no more than 50 percent of the increase in Federal funding using the flexibility provision each year over the same time period. Even though SEA and LEA spending might decline, the total investment in special education programs should increase over time because the incremental increases in IDEA funding that Congress anticipated would have been greater than the reduced baseline spending that SEAs or LEAs may have chosen to sustain in the years after exercising flexibility. However, when SEAs and LEAs opt to exercise flexibility in a year when there is a substantial, yet one-time increase in IDEA funding like that which occurred under the Recovery Act and choose to sustain the reduced baseline in subsequent years, the overall investment in special education program funding could instead decline. Although data are not available to accurately quantify the reduced investment in special education programs nationwide, it may be significant. The tables below provide hypothetical illustrations of both scenarios.

⁵ H. Rept. 108-77, page 93 (April 29, 2003).

Table 1: Hypothetical Example of One LEA's Investment in Special Education Including Incremental Federal IDEA Funding Increases

Special Education Funding by Fiscal Year (in thousands)	FY 2003	FY 2004 (Yr 1)	FY 2005 (Yr 2)	FY 2006 (Yr 3)	FY 2007 (Yr 4)	FY 2008 (Yr 5)	FY 2009 (Yr 6)	FY 2010 (Yr 7)	FY 2011 (Yr 8) (c)
Federal IDEA Part B Grant Allocation (a)	150	190	230	270	310	350	390	430	430
Federal Share of Special Education Funding (Rounded)	15%	19%	22%	25%	29%	32%	35%	38%	38%
Local Special Education Expenditures (b)	850	830	810	790	770	750	730	710	710
Total Investment in the LEA's Special Education Program	1,000	1,020	1,040	1,060	1,080	1,100	1,120	1,140	1,140 (d)

(a) This example assumes Federal funding increases of \$40,000 annually.

(b) This example assumes that for each year, the LEA retains base spending at the reduced level from the previous year and also exercises flexibility by \$20,000 which is 50 percent of the \$40,000 increase in Federal funding.

(c) This example assumes no increase in IDEA funding for this year.

(d) If Federal funding is unchanged in subsequent years, then the overall investment in the LEA's special education program could remain the same as shown for FY 2010.

Table 2: Hypothetical Example of One LEA's Investment in Special Education Including Incremental and a Substantial, One-Time Federal IDEA Funding Increase

Special Education Funding by FY (in thousands)	FY 2003	FY 2004 (Yr 1)	FY 2005 (Yr 2)	FY 2006 (Yr 3)	FY 2007 (Yr 4)	FY 2008 (Yr 5)	FY 2009 (Yr 6)	FY 2010 (Yr 7)	FY 2011 (Yr 8)
Federal IDEA Part B Grant Allocation (a)	150	190	230	270	310	350	390	780	390 (d)
Federal Share of Special Education Funding (Rounded)	15%	19%	22%	25%	29%	32%	35%	59%	42%
Local Special Education Expenditures	850	830 (b)	810 (b)	790 (b)	770 (b)	750 (b)	730 (b)	535 (c)	535
Total Investment in the LEA's Special Education Program	1,000	1,020	1,040	1,060	1,080	1,100	1,120	1,315	925 (e)

(a) This example assumes Federal funding increases of \$40,000 annually in FY 2004 to FY 2009 and a substantial yet temporary increase of \$390,000 (100 percent) in FY 2010.

(b) This example assumes the LEA retains base spending at the reduced level from the previous year and also exercises flexibility by \$20,000 which is 50 percent of the \$40,000 increase in Federal funding for this year.

(c) This example assumes the LEA retains base spending at the reduced level from the previous year and also exercises flexibility by \$195,000 which is 50 percent of the \$390,000 increase in Federal funding for this year.

(d) This example assumes that Federal funding resumed to FY 2009 level with no increase in IDEA funding for this year.

(e) If Federal funding is unchanged in subsequent years, then the overall investment in the LEA's special education program could remain the same as shown for FY 2011.

When comparing the two scenarios, the total investment in the LEA's special education programs increases by \$175,000 (15 percent), from \$1,140,000 as shown in Table 1 to \$1,315,000 in year 7 after the 100 percent increase in Federal funding as shown in Table 2. This overall spending increase occurs despite the LEA reducing its investment by \$175,000 (25 percent) from \$710,000 as shown in Table 1 to \$535,000 as shown in Table 2. Furthermore, the Table 2 scenario shows that the total program investment declines by \$390,000 (30 percent) in year 8 (and potentially in future years) if the LEA is able to maintain its lower spending level after the one-time infusion of Federal funds is depleted. When the expected total investment in FY 2011 under the scenario of incremental Federal funding increases (Table 1) is compared to the total investment in the same year in Table 2, which includes a large, one-time Federal supplement, there is a decrease of \$215,000 (19 percent) from \$1,140,000 (Table 1) to \$925,000 (Table 2) in the total funds invested in the program.

Suggestion for Reauthorization

1.2 Congress should consider taking action to prevent significant and potentially recurring reductions in the total investment in local special education programs when such reductions result from large, temporary Federal funding increases like the Recovery Act. Congress could limit SEA or LEA spending reductions under the flexibility provisions at IDEA §§ 613(a)(2)(C) and 613(j) that are attributed to a large, yet temporary Federal funding increase to only the period when the flexibility is exercised. Alternatively, Congress could prohibit any SEA or LEA spending reduction using flexibility for those supplemental Federal funds received as the result of a large, yet temporary funding increase. These limitations could be accomplished through amendments to the IDEA flexibility provisions or as part of any future legislation providing a large, yet temporary supplemental IDEA appropriation.

OSERS Comments

OSERS recommended revisions to how the OIG characterized SEA requirements related to the flexibility provision in IDEA § 613(j). OSERS stated that the level of support required under § 612(a)(18)(A) concerns a State's level of appropriations not expenditures; and, as such, SEA flexibility under § 613(j) does not allow a State to reduce the amount made available for special education and related services under § 612(a)(18)(A), nor does it affect the required amount of financial support in future years. OSERS recommended that the OIG should omit references to SEAs' exercise of "MOE flexibility" and a "reduced MOE baseline."

OIG Response

While we agree with OSERS' comment that SEA flexibility under § 613(j) does not affect a State's required level of appropriations, our concern in Issue 1.2 was with regard to expenditures. We believed there was ambiguity in the IDEA as to whether the level of SEA spending subject to flexibility under § 613(j) was related to the required level of support referred to under § 612(a)(18)(A). After considering OSERS' comment, we revised how we describe SEA requirements related to flexibility. For clarity, we deleted the specific term "MOE" when attached to "flexibility" and now reference SEA flexibility only in the context of SEA expenditures, not with regard to an SEA's level of fiscal support. In light of those clarifications, we have not revised our conclusion in Issue 1.2 that SEA flexibility could affect spending in future years. Congress intended that in any fiscal year in which an SEA or LEA reduces

expenditures pursuant to the flexibility provisions in IDEA, the reduced level of effort will be considered the new base for purposes of determining the required level of fiscal effort for the succeeding year.⁶

Section 2 – Implementation Issues for Department Consideration

Issue 2.1– Monitoring and Accounting for Freed-Up Funds

SEAs and LEAs each play important roles in ensuring that freed-up funds are used appropriately when LEAs exercise flexibility. We identified implementation issues with SEA monitoring of freed-up funds in all four States we reviewed in which LEAs exercised flexibility. At the time of our audit, one SEA did not know which LEAs in the State exercised flexibility due to limitations in its information system and the timing of the SEA's monitoring. Another SEA did not monitor LEAs' actual use of freed-up funds and it did not know how LEAs in the State used their freed-up funds, but it did provide information to LEAs about the freed-up funds requirements. Both LEAs we reviewed in this State were able to demonstrate that freed-up funds were used for ESEA-related activities. The SEAs in the other two States provided guidance to LEAs on the use of freed-up funds but did not monitor how they used these funds or require LEAs to track how they used the funds. As a result, none of the LEAs we reviewed in these States could demonstrate how they spent the freed-up funds. Even though we reported this as a finding in our audit report, we are covering it again in this MIR because the pervasiveness of the issue at SEAs in our review indicates that the lack of SEA oversight over the use of freed-up funds may be a nationwide issue, whereas the audit recommendation addressed only the four SEAs in our review where we identified a problem.

As a condition of receiving Federal grant funds, SEAs agree to assume important oversight responsibilities, including required monitoring of grant and subgrant activities to ensure compliance with applicable Federal requirements and achievement of performance goals. According to IDEA § 616(a)(1) and Department regulations, States have broad responsibility to monitor the implementation of federally funded programs serving children with disabilities. The Office of Special Education Programs (OSEP) has interpreted this broad responsibility to include monitoring the use of freed-up funds under the flexibility provision. Department regulations also require States to have policies and procedures to ensure compliance with the monitoring and enforcement requirements. A portion of the Federal grant funds that States reserve for other State-level activities must be used to carry out monitoring of LEA activities. Furthermore, according to 34 C.F.R. § 80.20, States are required to spend and account for Federal grant funds in accordance with State laws and procedures for spending and accounting for their own funds. Lastly, a State's fiscal control and accounting procedures should be sufficient to prepare reports and trace funds to a level of expenditures adequate to establish that the funds were used in accordance with applicable laws and regulations. When SEAs do not have an adequate system for monitoring LEA expenditures, including those funds made available because of flexibility, there is an increased risk that LEAs will make errors when administering funds, SEAs will not detect LEA noncompliance, or LEAs will misuse funds.

⁶ H. Rept. 108-779, page 197 (November 17, 2004).

Despite the Department's efforts to inform SEAs about their responsibilities for monitoring the use of freed-up funds, the entities we reviewed did not implement appropriate processes. The Department provided guidance on States' monitoring responsibilities for LEAs' use of freed-up funds in the "Part B Local LEA MOE" guidance that OSEP presented in a webinar on June 16, 2009, and maintains on the Technical Assistance Coordination Center's Web site. Additional guidance, "Funds for Part B of the Individuals with Disabilities Education Act Made Available Under The American Recovery and Reinvestment Act of 2009," last revised on September 9, 2010, states that an LEA's tracking of its freed-up funds for ESEA activities was necessary only in the year that flexibility was exercised, but it does not contain specific steps for this tracking.

Suggestions: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.1 Ensure that each SEA emphasize with all LEAs within its jurisdiction that tracking the use of freed-up funds, including completely and accurately accounting for and documenting its use of freed-up funds, is necessary whenever an LEA chooses to exercise flexibility.
- 2.2 Ensure that SEAs have established appropriate monitoring procedures for LEAs exercising flexibility, including timely monitoring to confirm that the LEAs properly used freed-up funds.

OSERS Comments

OSERS did not state whether it agreed or disagreed with our issue and suggestions. However, OSERS stated that OSEP has established a fiscal workgroup that will provide guidance and technical assistance to SEAs on IDEA fiscal requirements and SEA responsibilities, including the exercise of flexibility and the use of freed-up funds.

Issue 2.2 – Relationship of Flexibility and Coordinated Early Intervening Services Provisions

Because of the complex interrelationship between flexibility and voluntary coordinated early intervening services (CEIS), SEAs and LEAs must guard against LEAs overspending on CEIS when also exercising flexibility. LEAs provide CEIS to students in kindergarten through grade 12 who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment. In all four States we reviewed in which LEAs exercised flexibility, we identified at least one LEA that reserved and in some cases actually spent more IDEA funds on voluntary CEIS than were available after reducing local special education spending under the flexibility provision. When LEAs overspent IDEA funds on CEIS after also exercising flexibility, the amount that they spent on special education programs and services was less than required. In some cases, LEAs or SEAs did not understand the complex relationship between spending reductions allowed under the flexibility provision and the 15 percent IDEA allowance for CEIS. We also reported that some SEAs did not have necessary controls in place to prevent or detect the improper spending. In response to our finding, OSERS agreed to take steps to ensure that States in our review provided guidance to LEAs on the interrelationship between these activities. Even though we reported these issues as findings in our audit report, we are covering them again in this MIR because the

pervasiveness of the issue at LEAs included in our review indicates that it may be a nationwide issue and because our audit recommendations addressed only those LEAs where we identified a problem. It is also important that all SEAs have controls to prevent or detect instances when LEAs overspend on CEIS after exercising flexibility.

Under IDEA § 613(f), an LEA cannot use more than 15 percent of the amount that it receives under IDEA in any fiscal year,⁷ less amounts that the LEA reduces local special education spending by using flexibility, to develop and implement voluntary CEIS. CEIS are intended to reduce referrals for special education and related services in the future by providing services early when relatively simple interventions can address a child's needs. Thus, allowing schools to use a portion of available IDEA funds for CEIS has the potential to benefit both special education and general education programs.

OSERS clarified in regulation and guidance that LEAs that exercise flexibility and also use a portion of their IDEA funds for voluntary CEIS in the same year must do so with caution because the two spending decisions are interrelated. The amount of funds that an LEA uses for one purpose affects the amount that it may use for the other purpose. Appendix D to 34 C.F.R. Part 300 provides examples that illustrate how these spending decisions affect one another. According to OSEP officials, this statutory interrelationship may act as a safeguard to prevent excessive reductions in the amount an LEA spends on its core special education program in any year when it chooses to exercise flexibility and also use a portion of its IDEA allocation to fund voluntary CEIS activities for students without disabilities. Despite these actions, we found that LEAs spent more IDEA funds on voluntary CEIS than were available after reducing local special education spending under the flexibility provision. Therefore, OSERS should do more to ensure that LEAs do not overspend on CEIS and spend less than the amount required on special education programs and services.

Suggestions: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.3 Ensure that SEAs nationwide reinforce with LEAs in their respective States the relationship between spending for CEIS under IDEA § 613(f)(1) and the amount of local special education spending reductions allowed under the flexibility provision.
- 2.4 Ensure that each SEA has implemented appropriate controls to prevent, or at least detect, instances where LEAs have overallocated IDEA funds for CEIS when also exercising flexibility.

OSERS Comments

OSERS did not state whether it agreed or disagreed with our issue and suggestions. However, OSERS stated that it has addressed the relationship between flexibility and CEIS in past guidance

⁷ Section 2, Issue 2.5 of this MIR, covering annual significant disproportionality determinations for LEA flexibility eligibility, discusses when an LEA is required to use 15 percent of its IDEA funds on CEIS.

and Appendix D to 34 C.F.R. Part 300. OSERS agreed that it is important to continue to address the issue and intends to include further discussion of it in its fiscal guidance.

OIG Response

In addition to OSERS continuing to address flexibility and CEIS in future fiscal guidance, we also encourage OSEP to ensure that all States are carrying out their responsibilities, including LEA oversight, regarding this complex issue.

Issue 2.3 – Reporting on LEA Flexibility Reductions and CEIS

Our prior audit report (issued in July 2013) identified various data errors in the flexibility and CEIS data for 2010 (2009–2010) which was the first year that States reported that data to OSEP. OSEP posted the State-reported data on a public Web site. However, most of the errors we identified for States in our review and informed OSEP about for 2010 had still not been corrected or disclosed on the public Web site as of June 2014.⁸ Because nearly all of the LEA flexibility spending reductions related to the increased IDEA funding from the Recovery Act occurred in 2010, it is imperative that the data associated with flexibility in this year be accurate, reliable, and complete to ensure the appropriateness of future policy decisions that are based on the 2010 results.

Beginning with 2010, OSEP required all States that received IDEA Part B funds to collect and report data on flexibility reductions and CEIS for each LEA that received a subgrant under IDEA, Section 611 (Grants to States) or Section 619 (Preschool Grants). OSEP hired a contractor to collect and maintain the data on its Data Accountability Center Web site. OSEP labeled this specific data set as “Table 8 Report on IDEA Part B Maintenance of Effort Reduction (34 C.F.R. § 300.205(a)) and Coordinated Early Intervening Services (34 C.F.R. § 300.226)” (Table 8).

According to the Department’s Information Quality Guidelines,⁹ “it is important that the information the Department disseminates be accurate and reliable.” Educators, researchers, policymakers, and the public use information that the Department disseminates for a variety of purposes. The Department relies on information collected from third parties, including schools, school districts, and States. To ensure high-quality data are available to the above entities, the Department is responsible for accepting and using only administrative and program information that is accurate, reliable, unbiased, and secure. At the time of our audit, OSEP had implemented certain high-level edit checks, oversaw the contractor’s initial data review, and had other controls for the Table 8 data collection. However, these controls did not sufficiently safeguard the Department from receiving and using inaccurate data provided by States.

⁸ Public data about children and youth with disabilities served under IDEA, including the 2010 MOE reduction and CEIS data (Table 8), were transferred from the Data Accountability Center to the Technical Assistance Coordination Center Web site at <http://tadnet.public.tadnet.org/pages/712> under the headings Part B, and MOE and CEIS. On this Web site, the link for SEA and LEA Table 8 data for 2010 is listed as (2009).

⁹ Available on the Department’s Web site at <http://www2.ed.gov/policy/gen/guid/iq/infoqualguide.pdf>.

Five of the six States included in our review reported inaccurate data to OSEP for 2010.¹⁰ The types of reporting errors listed below occurred even though SEAs received specific reporting instructions. For example, the instructions stated that the SEA should report the actual dollar amount that each LEA reduced local, or State and local, expenditures under the IDEA flexibility provision. Although States were not required to provide a certification regarding the accuracy, reliability, and completeness of the data they submitted, they were expected to provide “data notes” to explain any data issues or anomalies that could affect the reported data’s accuracy or reliability. Reporting errors that we identified for 2010 included the following:

- One SEA reported all LEA MOE reductions in Table 8 when it should have reported only the MOE reductions that resulted from LEAs exercising flexibility. The SEA should have excluded MOE reductions related to allowable exceptions specified in IDEA § 613(a)(2)(B) according to OSEP’s instructions. This State’s data notes did not disclose the problem noted above.
- Two SEAs reported planned LEA flexibility reductions instead of the LEAs actual reductions and did not disclose the problem in their data notes.
- Another SEA overstated flexibility reductions for at least 10 LEAs, including the two LEAs in our review, by a total of more than \$50 million. For the two LEAs in our review, the SEA reported the maximum amount that the LEAs could reduce local spending by instead of the actual spending reduction amounts.
- Another SEA reported that 25 LEAs exercised flexibility even though none had. The SEA also reported inaccurate data on amounts that LEAs reserved for voluntary CEIS and significant disproportionality determinations for 26 LEAs. This States’ flexibility reduction data has been corrected on the public Web site.

In addition to the public postings, OSEP also included its analysis of LEAs’ flexibility reductions, using this incorrect data, in presentations it made to members of Congress and in OSERS’ LEA MOE Notice of Proposed Rule-Making, which was published in September 2013. OSEP officials told us that they were aware that some of the publicly available Table 8 information for 2010 was inaccurate and were working with all States, including those covered by our audit, to confirm that the data were accurate. However, they stated that they did not believe that the overall results would be materially different despite the errors we reported in our audit report. Further, OSEP officials told us that it typically takes 3 to 4 years for a data collection to produce consistently high-quality data. In addition, the officials noted that publicly reported data include “data notes” that explain many anomalies.

Eligible LEAs throughout the four States we reviewed where LEAs exercised flexibility reduced local spending for special education programs in 2010, following the unprecedented increase in IDEA funding under the Recovery Act. Further, according to the data reported by other States, significantly more eligible LEAs nationwide exercised flexibility and reduced local special education spending in 2010 when compared to the subsequent year. According to the Department’s Table 8 data, flexibility reductions totaled almost \$1.5 billion nationwide in 2010 as compared to about \$40 million nationwide in 2011 (2010–2011). Thus, the Table 8 data for 2010

¹⁰ We identified errors only for selected LEAs where we reviewed reported data—the data may contain additional errors for other LEAs that the SEAs reported on.

would be critical for any policy analysis related to the utilization of the flexibility provision when a large, yet temporary IDEA funding increase occurs.

Without full disclosure of data quality issues, there is a lack of transparency in the types of reporting errors for 2010 described in this report. As of June 2014, the Table 8 data for 2010 on the Technical Assistance Coordination Center's Web site was last updated on October 29, 2012. States' data notes had also not been updated to disclose the data quality issues described above.

The Department likely cannot quantify the actual impact of all Table 8 reporting errors nationwide such as States including (1) all LEA MOE reductions instead of only the flexibility reductions, (2) planned instead of actual reductions, (3) the maximum amount that LEAs could reduce local spending by instead of the actual spending reduction amounts, or (4) LEA MOE reductions that never occurred. However, these errors impair the Department's ability to provide accurate, complete and reliable information to the public and Congress. Additionally, without reliable LEA flexibility reduction data for 2010, the Department, lawmakers, other stakeholders, and the public may not know the actual extent that the flexibility provision was used by LEAs when they received a large, one-time infusion of Federal funding through the Recovery Act. Accurate LEA flexibility reduction data in relation to this large Federal funding increase could be important to stakeholders if a similar increase is provided in the future. Data deficiencies related to the amount of voluntary CEIS used by LEAs and the incidence of significant disproportionality also compromises the ability of interested parties to obtain an accurate understanding of those issues. At a minimum, full disclosure of known data limitations is necessary to ensure that interested parties are fully aware of the weaknesses in the data.

Suggestions: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.5 Continue to work with States to improve the quality of the 2010 data presented in Table 8 until OSERS can ascertain whether the extent of reporting errors could have a material effect on the accuracy, reliability, or completeness of the data.
- 2.6 Ensure that SEAs with known data issues or anomalies provide or update data notes for 2010 fully explaining the weaknesses of the information. These notes should accompany the data in any form that it is presented, including public postings and reports to Congress, the Office of Management and Budget, or others.
- 2.7 Add a disclaimer to the public Web site describing limitations in the 2010 data presented in Table 8 data to include, at a minimum, the reporting errors listed above and retain such disclaimer until a comprehensive data verification process has been completed to ensure the data are accurate, reliable, and complete.
- 2.8 For all future data collections, consider whether to require States to certify to the accuracy, reliability, and completeness of the data.

OSERS Comments

OSERS did not state whether it agreed or disagreed with our issue and suggestions. However, OSERS stated that OSEP has been working with States to generate data notes to address or

explain data quality concerns identified in the 2010 Table 8 data. Because the Data Accountability Center closed in September 2013, OSEP does not have access to a submission system that would allow States to update the 2010 Table 8 data, but States can still submit data notes with additional explanations, clarifications, or revisions to the data submitted for 2010. OSEP intends to update the 2010 Table 8 data notes document.

OSEP is temporarily using the Technical Assistance Coordination Center Web site to maintain the Table 8 data while OSEP transitions to another publicly available Web site. OSERS is working with staff from Technical Assistance Coordination Center to evaluate the feasibility of including a disclaimer about the 2010 Table 8 data. Once the Table 8 data are posted on the new Web site, OSERS stated it will post all data notes, including updated data notes, and a notice identifying 2010 Table 8 data quality concerns.

OSERS further commented that OSEP has implemented or continues to implement a number of actions to improve the quality of the Table 8 data, including automating edit checks in the data submission system to provide States immediate feedback on possible data quality concerns and providing general technical assistance to States on the reporting of Table 8 data during presentations at national conferences and webinars. Also, beginning with FY 2012, OSEP assigned review of the Table 8 data to staff who are experts in data, as well as staff who are experts in fiscal monitoring under IDEA. Finally, OSEP has recently published a Notice of Proposed Priority to fund a technical assistance center to build the States' capacity to report high-quality fiscal data (including Table 8 data) to the Department.

OSERS stated that OSEP also intends to evaluate the feasibility of implementing a State certification for future submissions of Table 8 data with the Elementary and Secondary Division of the National Center for Education Statistics, which maintains the new Table 8 data submission system.

OIG Response

We appreciate that OSEP has taken or plans to take a number of steps to improve the quality of State data submissions, update the 2010 Table 8 data notes, and include a statement about data quality for the first year Table 8 data collection. OSERS stated that OSEP no longer has access to a submission system that would allow States to update the 2010 Table 8 data. We encourage OSEP to work with States to verify the data previously submitted, obtain and review corrected 2010 Table 8 data, as applicable, and explore other means to update the 2010 Table 8 data to ensure quality data is available. This verification could include a requirement that States confirm that the initial or corrected data they submitted do not include the types of errors we describe in Issue 2.3. Lawmakers, other stakeholders, and the public need reliable 2010 Table 8 data to understand the extent to which LEAs used the flexibility provision when they received a large, one-time infusion of Federal funding through the Recovery Act. As stated earlier in this report, because LEA flexibility spending reductions were substantially larger in 2010 following the increased IDEA funding under the Recovery Act than in the subsequent year, it is imperative that the data associated with flexibility in 2010 be accurate, reliable, and complete to ensure the appropriateness of future policy decisions.

Issue 2.4 – Annual Performance Determinations for LEA Flexibility Eligibility

During our prior audit we identified a situation where LEAs' annual performance¹¹ results can vary across States, which can lead to inequitable results for LEAs in one State versus another in the same or similar circumstances. This situation occurs because SEAs are allowed to individually establish how they arrive at an LEA's overall performance determination from the separate assessments they make on specific mandatory evaluation factors. SEAs use these annual determinations, which they must report to the Secretary, to assess whether the special education program each LEA operates is meeting Federal program requirements. When an LEA does not meet the Federal program requirements, an SEA must apply certain enforcement actions to the LEA ranging from technical assistance to withholding some or all LEA funds. An LEA's eligibility for flexibility is also based on these annual determinations.

Each SEA must adhere to certain requirements when conducting annual LEA performance determinations, including the use of four specific mandatory evaluation factors. The mandatory evaluation factors are (1) performance on compliance indicators, (2) whether valid and reliable data exist, (3) whether the LEA has corrected identified noncompliance, and (4) other data available to the State about the LEA's compliance with IDEA, including relevant audit findings. Nonmandatory evaluation factors may include, among other things, an LEA's graduation or dropout rates or the participation rate of students with disabilities in State assessments. SEAs individually assess the specific evaluation factors and then combine the factors to arrive at an overall performance determination for each LEA. Overall performance determinations fall into one of four categories: meets requirements, needs assistance, needs intervention, and needs substantial intervention.

Even though an SEA is required to assign one of the four determination categories based on its assessment covering the evaluation factors, there is no uniform minimum threshold identified in law, regulations, or guidance that an LEA must attain on each factor to receive an overall determination in one category versus another.¹² As a result, LEAs in one State may receive an overall determination of "meets requirements" even though they were assessed as needing substantial intervention on a specific mandatory evaluation factor while LEAs in another State might receive an overall determination of "needs intervention" or "needs substantial intervention" under the same scenario.

The SEAs we reviewed varied in how they correlated overall determinations to LEA performance on the specific evaluation factors.¹³ Two of the SEAs assigned an overall determination of meets

¹¹ Performance determinations described in this issue relate to IDEA § 616.

¹² In issuing its 2008 final regulations concerning IDEA Part B, the Department asserted that States should have discretion in making annual determinations on the performance of their LEAs and expressly declined to regulate a uniform process for making those determinations (73 Fed. Reg. 73021, December 1, 2008). OSERS has provided guidance to SEAs on completing LEA annual performance determinations.

¹³ We reviewed determination information that related to LEAs eligibility for flexibility in FY 2009–2010.

requirements only to LEAs that met requirements on all mandatory evaluation factors.¹⁴ Two other SEAs included in our review allowed LEAs to score below “meets requirements” on one or more mandatory evaluation factors and still attain an overall determination of “meets requirements.” One of these SEAs assigned an overall determination of “meets requirements” even when an LEA was assessed as needing intervention on two or needing substantial intervention on one of the mandatory evaluation factors. This SEA concluded that LEAs could perform below requirements on individual performance measures that OSEP considered to be mandatory yet still attain a favorable overall determination.

When States are allowed to individually define thresholds for overall performance determinations, inequities among States may result. These inequities were evident across the States in our review as LEAs with substandard performance on mandatory evaluation factors were identified as “meets requirements” overall in some States while LEAs in other States were assigned a lower overall determination result even though they performed at the same level or possibly better.

Inequities can also occur across States when they have discretion in setting thresholds for the other three performance determination categories (needs assistance, needs intervention, and needs substantial intervention). When an SEA determines that an LEA performed at the level of one of these other three determination categories, it must prohibit the LEA from exercising flexibility. It must also implement appropriate enforcement mechanisms to improve the LEA’s performance, including (1) providing technical assistance, (2) placing conditions on LEA funding, (3) requiring a corrective action plan or improvement plan, or (4) withholding some or all LEA funds. Given the inconsistency in thresholds that SEAs use to assign determination categories to LEAs’ actual performance, the types and degree of enforcement actions implemented could vary across States under identical circumstances.

Suggestion: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.9 Consider regulatory action to define a minimum rating that an LEA must achieve on the mandatory evaluation factors to receive a rating of “meets requirements” on its overall performance.

OSERS Comments

OSERS did not state whether it agreed or disagreed with our issue and suggestion. However, OSERS stated that the use of “IDEA section 616 determinations” would be a clearer term than “performance results.” OSERS also believes that States should continue to have discretion in making annual IDEA Section 616 determinations.

¹⁴ Some of the mandatory evaluation factors required by OSERS may not apply to every LEA’s determination. For example, an LEA with Federal awards expended below the audit threshold set by the Office of Management and Budget Circular A-133 may not be assessed for audit findings.

OSERS stated that it has begun implementing its Results Driven Accountability initiative, which is designed to place an increased emphasis on outcomes for students with disabilities. As part of this initiative, OSERS is in the process of changing how it makes annual IDEA State determinations to provide a greater focus on results. As OSERS begins to use results data when making annual State determinations, it expects more States will also consider using results data when making annual LEA determinations.

OIG Response

We inserted a footnote to clarify that performance determinations described in this issue relate to IDEA § 616. We continue to believe that defining a minimum rating that an LEA must achieve on individual mandatory evaluation factors to receive a rating of “meets requirements” is an important way to ensure that LEAs are operating their special education programs effectively and in accordance with Federal requirements. As stated in this report, when States are allowed to individually define thresholds for overall performance determinations, inequities among States may result.

Issue 2.5 – Annual Significant Disproportionality Determinations for LEA Flexibility Eligibility

During our prior audit we learned that OSEP was concerned that the significant disproportionality threshold that one State in our review had established was not set at a meaningful level and thus would not identify any problems at LEAs. Significant disproportionality is a measure, defined in IDEA § 618(d), used to determine whether specific racial and ethnic groups are significantly overrepresented with respect to the identification of children as having a qualifying disability, including the identification of children with particular impairments; the placement of children in particular educational settings; and the incidence, duration and type of disciplinary actions, including suspensions and expulsions, imposed on students with disabilities. States are required to annually collect and examine data to determine whether significant disproportionality is occurring in the State or at LEAs within the State. Where significant disproportionality is occurring, the State must:

- provide for the review, and, if appropriate, revision of LEA policies, procedures, and practices used to identify, place, or discipline students with disabilities to ensure that LEAs comply with the requirements of IDEA;
- require the LEA to publicly report on the revision of its policies, procedures, and practices; and
- require the LEA to reserve 15 percent of its Part B funds to provide comprehensive CEIS to children in the LEA, particularly, but not exclusively, in those groups that were significantly overidentified.

An LEA that is found to have significant disproportionality is also not eligible for flexibility.

During development of the implementing regulations after IDEA was reauthorized in 2004, OSERS considered the amount of discretion that States should have in defining significant disproportionality. OSERS concluded that establishing a national standard for these annual determinations was not appropriate because there are multiple factors to consider at the State

level, such as the population size and the size of individual LEAs. According to OSERS, States are in the best position to evaluate those factors. OSERS provided guidance to States on assessing disproportionality,¹⁵ but each State has discretion in defining the term for its LEAs and the State in general.¹⁶

The U.S. Government Accountability Office (GAO) issued a report in February 2013 that described how SEAs identify LEAs with significant disproportionality and acknowledged that the Department has allowed States flexibility in defining significant disproportionality.¹⁷ However, GAO concluded that a standard approach to defining significant disproportionality with built-in flexibilities to account for differences among States would provide better assurance that States are gauging the true magnitude of the problem of overrepresentation of racial and ethnic groups in special education programs. GAO recommended that the Department develop a standard approach for defining significant disproportionality to be used by all States. This approach should allow flexibility to account for State differences and specify when exceptions can be made. The Department responded that for the upcoming reporting year it will collect States' definitions of significant disproportionality, including information on the identification of children with disabilities, identification by disability category, placement, and disciplinary actions, in which a district was identified with significant disproportionality based on race and ethnicity. According to the Department, such information will provide greater transparency and assist in holding States accountable for meeting the requirements regarding significant disproportionality and early intervening services by highlighting States where further examination may be warranted. Further, the Department said that it may provide additional guidance on the issue that might include developing a standard approach for defining significant disproportionality.

OSEP periodically reviews critical elements of a State's IDEA program, including a State's definition of significant disproportionality. During a State monitoring visit in October 2009, OSEP expressed concern that one SEA's threshold for concluding whether significant disproportionality existed was too high, making it unlikely that any LEA would be identified as having a problem with overrepresentation of racial and ethnic groups in special education programs and thus be ineligible for flexibility. However, OSEP did not require the State to modify its threshold. OSEP officials told us that, because each State has the discretion to define significant disproportionality, the Department does not have the authority to require a State to change its significant disproportionality definition unless it can demonstrate that the definition is not consistent with the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance.

With no standard for all States to follow in defining significant disproportionality, States set their own definitions. The threshold that the SEA discussed above established for significant disproportionality may have led to some LEAs being eligible for flexibility when they would not have been if the SEA's threshold had been more meaningful. Absent a meaningful measure for

¹⁵ OSEP Memorandum 07-09, "Disproportionality of Racial and Ethnic Groups in Special Education," April 24, 2007, and "Questions and Answers on Disproportionality," June 2009.

¹⁶ 71 Fed. Reg. 46738 (August 14, 2006).

¹⁷ GAO-13-137, "Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education," February 2013.

significant disproportionality, LEAs that should be implementing corrective actions to remedy disproportionality will not be required to do so, and students may not receive appropriate services.

Suggestion: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.10 Explore mechanisms, including proposing regulations, that would allow OSEP to ensure that individual States are setting meaningful thresholds for concluding whether significant disproportionality exists at LEAs within their State.

OSERS Comments

OSERS did not state whether it agreed or disagreed with our issue and suggestion. However, OSERS stated that the description of “significant disproportionality” in the second sentence of this issue should be revised to reflect the statutory requirement in IDEA § 618(d). OSERS also suggested that we clarify our characterization of the Department’s response to the GAO report discussed in Issue 2.5. OSERS further stated that the Department is planning to publish a Request for Information in the Federal Register to solicit information that will assist the Department in determining whether to propose regulations requiring States to use a standard approach to determine which LEAs have significant disproportionality. This information will help OSERS determine what actions the Department should take to ensure that individual States are setting meaningful thresholds for concluding whether significant disproportionality exists in LEAs within their States.

OIG Response

We modified the explanation of significant disproportionality to address the wording changes that OSERS recommended. We also modified our characterization of the Department’s response to the GAO report discussed in Issue 2.5.

Issue 2.6 – Annual Notifications for LEA Flexibility Eligibility

The flexibility provision can provide an important tool for LEAs to reduce their level of spending for special education programs and leverage increased Federal funding, especially during difficult economic times. However, LEAs included in our review were not always aware that they were eligible to exercise flexibility or the full extent that they could reduce local spending by as a result of the Recovery Act’s increased funding.

An SEA must prohibit an LEA that is not meeting applicable Federal requirements from reducing its MOE under the flexibility provision for any fiscal year. In contrast, Federal law and regulations do not require SEAs to notify LEAs of their eligibility for flexibility, nor has OSERS issued any guidance requiring SEAs to provide these notifications or calculate the amounts each eligible LEA can reduce local special education spending by. Instead, OSERS expects individual LEAs to determine eligibility and calculate the amount it can reduce spending by. The “Part B Local LEA MOE” guidance that OSEP presented in a webinar on June 16, 2009, and maintains on the Technical Assistance Coordination Center’s Web site describes steps that an LEA can take to identify whether it has met those conditions that would allow it to exercise flexibility. The

guidance also provides an example of how to compute the associated MOE reduction and reinforces that States are responsible for ensuring that LEAs meet MOE requirements.

Five of six SEAs included in our review chose to inform LEAs of their eligibility status, but took different approaches in how they provided this information. Two of these SEAs used their electronic grants management system to advise each LEA of the amount it could reduce local spending by using flexibility. The three other SEAs did not formally notify each eligible LEA that it could exercise flexibility, but they did provide sufficient information to allow an LEA to determine on its own whether it was eligible. All three of these SEAs provided each LEA with a letter stating its determination rating. Further, these SEAs supplemented the letters with other information describing how an LEA would be considered eligible for flexibility. Unlike some SEAs in our review, these SEAs did not determine the amount each eligible LEA could reduce local special education spending by and provide the information to LEAs. We followed up with these SEAs in April 2014 to identify any significant changes that they had made to their policies and procedures. One SEA advised us that its application system now calculates the maximum allowable reduction for each LEA and it has developed a process to inform LEAs of the applicable amount. SEA notifications to LEAs regarding their eligibility for flexibility, along with SEA calculations of each eligible LEA's maximum allowable spending reduction, would help ensure that only eligible LEAs exercise flexibility and that the reduction amount is appropriate. Lastly, one SEA did not inform LEAs of their eligibility for flexibility. The two LEAs we reviewed in this State were not aware of the flexibility provision and did not know that they had been eligible to reduce local spending. Even though these and other LEAs in the State were eligible, none actually reduced local special education spending under the flexibility provision.

Suggestions: We suggest that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.11 Inform each SEA that it should notify LEAs as to whether they are eligible for flexibility and if so, the amount by which the LEA can reduce its non-Federal special education spending.
- 2.12 Update flexibility guidance to clarify the SEA's responsibilities in Suggestion 2.11 above to ensure the consistency, accuracy, and sufficiency of information that LEAs consider when deciding whether to exercise flexibility.

OSERS Comments

OSERS agreed that this issue is important and intends to address it in its fiscal guidance.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of this MIR were to (1) provide information to the Department and Congress on specific matters that may warrant consideration when IDEA is reauthorized and (2) identify additional actions that the Department can take to address implementation issues associated with IDEA's flexibility provisions. We initiated this project based on the results of our audit "Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds," Control Number ED-OIG/A09L0011, which culminated in a final audit report issued on July 25, 2013.

During the audit that forms the basis for the reporting in this MIR, we obtained information at SEAs in California, Illinois, Louisiana, Maine, Ohio, and Texas and selected LEAs¹⁸ about how they administered certain provisions of IDEA and the Department's implementing regulations in response to increased funding provided under the Recovery Act. At the State level, we focused our work on each SEA's determination data and processes for FY 2006–2007 through FY 2009–2010, policies and procedures for oversight of the LEA flexibility provision, and impacts related to LEAs exercising flexibility. While performing the audit, we looked at data associated with flexibility reductions and CEIS that the six SEAs reported to the Department. At selected LEAs within these States, we reviewed determination information to support their eligibility for flexibility, information about the use of and accounting for freed-up funds when LEAs exercised flexibility in FY 2009–2010, and impacts from exercising flexibility. In one State, we also reviewed information concerning the State's eligibility for flexibility and use of and accounting for freed-up funds when it exercised flexibility.

To achieve the specific MIR objectives, we focused on eight areas of our audit work: (1) allowable uses of freed-up funds, (2) reduced LEA MOE baseline spending, (3) monitoring and accounting for freed-up funds, (4) relationship of flexibility and CEIS provisions, (5) reporting on LEA flexibility reductions and CEIS, (6) annual performance determinations for LEA flexibility eligibility, (7) annual significant disproportionality determinations for LEA flexibility eligibility, and (8) annual notifications for LEA flexibility eligibility. We considered pertinent information previously obtained from the audit documentation, prior ED-OIG and GAO reports, House Conference and Senate Committee reports related to the 2004 IDEA reauthorization, and applicable Federal laws, regulations, and guidance. We also met with representatives from OSEP to gain further insight about certain aspects of the issues discussed in the MIR. Following this meeting, we reviewed additional guidance provided by OSEP and Federal Register documentation which related to LEA flexibility eligibility and monitoring of the use of freed-up funds. We believe that the evidence obtained provides a reasonable basis for the results and conclusions contained in the report, based on our objectives.

¹⁸ We selected two LEAs in each of five States and seven LEAs in Louisiana. This report does not name the specific LEAs, but a listing is included on page 30 of the final audit report ED-OIG/A09L0011.

We conducted the fieldwork for this MIR from May 2013 through April 2014. We conducted our work in accordance with the Council of Inspectors General on Integrity and Efficiency “Quality Standards for Inspection and Evaluation.”

ADMINISTRATIVE MATTERS

This management information report issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the report is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552) or protection under the Privacy Act (5 U.S.C. § 552a).

Electronic cc: Melody Musgrove, Director, Office of Special Education Programs
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Rehabilitative Services

Attachments

Attachment 1: Abbreviations, Acronyms, and Short Forms Used in this Report

CEIS	Coordinated Early Intervening Services
Department	U.S. Department of Education
ESEA	Elementary and Secondary Education Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office
H. Rept.	House of Representatives Report
IDEA	Individuals with Disabilities Education Act, Part B
LEA	Local Educational Agency
MIR	Management Information Report
MOE	Maintenance of Effort
OSEP	Office of Special Education Programs
OSERS	Office of Special Education and Rehabilitative Services
Recovery Act	American Recovery and Reinvestment Act of 2009
SEA	State Educational Agency
Table 8	Report on Maintenance of Effort Reduction and Coordinated Early Intervening Services (IDEA, Part B)

Attachment 2: OSERS' Comments on the Draft Report



UNITED STATES DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES May 30, 2014

OSERS COMMENTS Draft Management Information Report on IDEA Maintenance of Effort Flexibility: Control Number ED-OIG/X09N0006

To: Raymond Hendren
Richard Rasa
Office of Inspector General (OIG)

From: Michael Yudin /s/
Acting Assistant Secretary

Subject: OIG Draft Management Information Report (MIR) on Individuals with
Disabilities Education Act (IDEA) Maintenance of Effort (MOE) Flexibility
Control Number ED-OIG/A09N0006

We appreciate the work of the OIG related to the MIR on IDEA MOE Flexibility, Control Number ED-OIG/A09N0006. The Draft MIR includes results and suggestions related to your work on the local educational agency (LEA) MOE provisions in Part B of the IDEA. Specifically, you examined the provision that allows an LEA, under certain circumstances, to reduce the level of local expenditures for educating children with disabilities by up to 50 percent of any increase in its annual IDEA, Part B, Section 611, subgrant allocation.

Our comments and suggestions correspond to the specific sections in the Draft MIR.

Background

Excerpt from Draft MIR: The second paragraph on page 2 states:

“States are also required to maintain financial support for educating children with disabilities. According to IDEA § 612(a)(18), States must not reduce their level of financial support below the amount of support for the preceding fiscal year unless the State is granted a waiver for exceptional or uncontrollable circumstances or it exercises the adjustment provision in IDEA § 613(j) that allows for reduced spending. For States, the comparison used to assess compliance is the amount of State financial support made

available for special education and related services from one year to the next, regardless of the amount actually spent.”

OSERS Comment: While not a major part of the audit on which the MIR was based, we want to clarify that it is OSERS’ position that all States must meet the requirement in IDEA § 612(a)(18) every year, regardless of whether the State exercises the flexibility in IDEA § 613(j). The State educational agency (SEA) flexibility provision in § 613(j) is a separate mechanism from the State-level MOE requirement in § 612(a)(18)(A), and does not affect whether a State succeeds or fails in meeting § 612(a)(18)(A). SEA flexibility allows an SEA, under certain circumstances, to reduce expenditures that otherwise would be required under the § 612(a)(17)(C) requirement that States use IDEA Part B funds to “supplement, not supplant” funds that are expended for special education and related services. SEA flexibility does not allow a State to reduce its amount made available for special education and related services under § 612(a)(18)(A), nor does SEA flexibility affect a State’s required amount of financial support in future years. SEA flexibility is an exception to the § 612(a)(17)(C) “supplement, not supplant” requirement, not an exception to the § 612(a)(18)(A) State-level MOE requirement for two reasons. First, the § 612(a)(17)(C) “supplement, not supplant” requirement and the § 613(j) SEA flexibility provision both involve an assessment of a State’s expenditures, whereas the § 612(a)(18)(A) State-level MOE requirement is based on a State’s level of appropriations, not expenditures. Second, the § 612(a)(17)(C) “supplement, not supplant” requirement specifically refers to § 613(j) as an exception, whereas § 612(a)(18) provides no such exception to the State-level MOE requirement. Therefore, in order to accurately reflect the statutory requirement in § 612(a)(18), we recommend that “or it exercises the adjustment provision in IDEA § 613(j) that allows for reduced spending” be deleted from the second sentence in the paragraph above.

In addition, IDEA § 612(a)(18)(C) provides that a State may be granted a waiver of the State-level MOE requirement in § 612(a)(18)(A) if the Secretary determines that: (1) granting a waiver would be equitable due to exceptional or uncontrollable circumstances; or (2) a State provides clear and convincing evidence that the State makes available a free appropriate public education to all children with disabilities in the State. Therefore, in order to accurately reflect the two situations in which a State may qualify for a waiver of the State-level MOE requirement, we recommend revising the second sentence in the paragraph above to read: “According to IDEA § 612(a)(18), States must not reduce their level of financial support below the amount of support for the preceding fiscal year unless the State is granted a waiver either due to exceptional or uncontrollable circumstances or because the State has provided clear and convincing evidence that it makes available a free appropriate public education to all children with disabilities in the State.”

Excerpt from Draft MIR: The first sentence of the first bullet on page 2 states:

“An eligible LEA can reduce the level of local expenditures for the education of children with disabilities by up to 50 percent of any increase in its annual IDEA allocation.”

OSERS Comment: In order to accurately reflect the statutory requirement in IDEA § 613(a)(2)(C), we recommend revising the last part of the sentence to state: “An eligible LEA can reduce the level of local expenditures ... *any increase in the LEA’s annual IDEA, Part B, section 611, subgrant allocation*” (emphasis added).

Excerpt from Draft MIR: The second sentence of the first bullet on page 2 states:

“To be eligible for MOE flexibility, an LEA must meet annual performance requirements....”

OSERS Comment: We assume this refers to the requirements in IDEA § 616(f) and 34 C.F.R. § 300.608 that an SEA must prohibit an LEA that receives an annual determination of other than “meets requirements” under IDEA § 616 from exercising the LEA MOE flexibility provision. In order to accurately reflect the statutory requirement in IDEA § 616(f), we recommend revising the sentence to state: “To be eligible for MOE flexibility, an LEA must “meet requirements” under IDEA § 616.”

Excerpt from Draft MIR: The second sentence of the first bullet on page 2 states:

“To be eligible for MOE flexibility, an LEA must...not have significant disproportionality, a measure of whether specific racial and ethnic groups are significantly overrepresented in special education programs at individual LEAs, as determined by the SEA.”

OSERS Comment: In order to accurately reflect the statutory requirement in IDEA § 618(d), we recommend revising the sentence to state: “To be eligible for MOE flexibility, an LEA must ... not have significant disproportionality, *a measure of whether specific racial and ethnic groups are significantly overrepresented with respect to the identification of children as children with disabilities, including identification by disability category, placement of children with disabilities in particular educational settings, and disciplinary actions.*”

Excerpt from Draft MIR: The first bullet on page 3 states:

“An eligible SEA can reduce the level of expenditures from State sources for the education of children with disabilities by up to 50 percent of any increase in its annual IDEA grant amount. To be eligible for State-level MOE flexibility, the SEA must (1) pay or reimburse all LEAs within the State, exclusively from State revenue, 100 percent of the costs of special education programs and related services and (2) establish, maintain, and oversee a program of free appropriate public education and meet the requirements for implementing Federal special education programs. According to IDEA § 613(j)(5), an SEA may not exercise MOE flexibility if any LEA in the State would, as a result, not be able to meet the free appropriate public education requirements from the combination of Federal and State funds received. An SEA that exercises MOE flexibility must use funds from State sources, equal to the amount of the MOE reduction, to support activities authorized under the ESEA or to support need-based higher education programs for teachers or students.”

OSERS Comment: In order to accurately reflect the statutory requirement in IDEA § 613(j), we recommend the following revisions to this paragraph:

- (1) Revise the first sentence to read: “An eligible SEA can reduce the level of expenditures from State sources for the education of children with disabilities by up to 50 percent of any increase in its annual IDEA, Part B, section 611 grant amount” (emphasis added);
- (2) Revise the second sentence to state: “An SEA that exercises the flexibility in § 613(j) must: (1) pay or reimburse all LEAs within the State from State revenue 100 percent of the non-Federal share of the costs of special education and related services” [emphasis added]; (2) establish, maintain, or oversee programs of free appropriate public education that meet IDEA Part B requirements; and (3) meet requirements under § 616(d)(2)(A).”; and
- (3) Refer to “SEA flexibility” rather than “State level MOE flexibility” or “MOE flexibility.” IDEA § 613(j) does not use the phrases “MOE flexibility” or “maintenance of effort”. SEA flexibility is a provision that operates independently of the State-level MOE requirement. In addition, we recommend referring to “reduction” rather than “MOE reduction” when referencing the reduction available under IDEA § 613(j).

Section 1- Matters to Consider During IDEA Authorization:

OSERS Response: OSERS has no comments on Section 1, except to note that OSERS does not agree with the OIG’s characterization on page six under Issue 1.2 – Reduced LEA MOE Baseline Spending – of the SEA flexibility provision in IDEA § 613(j). The OIG states that, in a year after an SEA exercises the flexibility in IDEA § 613(j), the required level of State financial support for special education and related services that a State must maintain is reduced. As noted in the comments above, OSERS’ position is that all States must meet the requirement in IDEA § 612(a)(18) every year, regardless of whether the State exercises the flexibility in IDEA § 613(j). SEA flexibility under § 613(j) does not allow a State to reduce its amount made available for special education and related services under § 612(a)(18)(A), nor does SEA flexibility affect a State’s required amount of financial support in future years. Therefore, in order to accurately reflect the statutory requirement in IDEA § 612(a)(18), we recommend that this section be revised to omit references to SEAs’ exercise of “MOE flexibility” and a “reduced MOE baseline.”

Section 2- Implementation Issues for U.S. Department of Education (Department) Consideration

Issue 2.1-Monitoring and Accounting for Freed-Up Funds

OIG Suggestions:

- 2.1 Ensure that each SEA emphasize with all LEAs within its jurisdiction that tracking the use of freed-up funds, including completely and accurately accounting for and documenting its use of freed-up funds, is necessary whenever an LEA chooses to exercise MOE flexibility.

- 2.2 Ensure that SEAs have established appropriate monitoring procedures for LEAs exercising MOE flexibility, including timely monitoring to confirm that the LEAs properly used freed-up funds.

OSERS Response: The Office of Special Education Programs (OSEP) has established a Fiscal Workgroup to coordinate fiscal work. One of the Fiscal Workgroup's main tasks moving forward will be to provide guidance and technical assistance to SEAs on IDEA fiscal requirements and SEA responsibilities, including the exercise of flexibility and the use of freed-up funds.

Issue 2.2 Relationship of MOE Flexibility and Coordinated Early Intervening Services (CEIS)

OIG Suggestions:

- 2.3 Ensure that SEAs nationwide reinforce with LEAs in their respective States the relationship between spending for CEIS under IDEA § 613(f)(1) and the amount of local special education spending reductions allowed under MOE flexibility provision.
- 2.4 Ensure that each SEA has implemented appropriate controls to prevent, or at least detect, instances where LEAs have overallocated IDEA funds for CEIS when also exercising MOE flexibility.

OSERS Response: The issue of the relationship between MOE flexibility and CEIS is particularly complicated. While OSERS has provided guidance on this issue in the past and it is addressed in Appendix D to 34 C.F.R. Part 300, OSERS agrees that it is important to continue to address this issue. Therefore, OSERS intends to include further discussion of it in its fiscal guidance.

Issue 2.3-Reporting on LEA MOE Flexibility Reductions and CEIS

OIG Suggestions:

- 2.5 Continue to work with States to improve the quality of the 2010 data presented in Table 8 until OSERS can ascertain whether the extent of reporting errors could have a material effect on the accuracy, reliability, or completeness of the data.
- 2.6 Ensure that SEAs with known data issues or anomalies provide or update data notes for 2010 fully explaining the weaknesses of the information. These notes should accompany the data in any form that it is presented, including public postings and reports to Congress, the Office of Management and Budget, or others.
- 2.7 Add a disclaimer to the public Web site describing limitations in the 2010 data presented in Table 8 data to include, at a minimum, the reporting errors listed above and retain such disclaimer until a comprehensive data verification process has been completed to ensure the data are accurate, reliable, and complete.
- 2.8 For all future data collections, consider whether to require States to certify to the accuracy, reliability, and completeness of the data.

OSERS Response: OSEP staff has been working with States to generate data notes to address or explain data quality concerns identified in the 2010 (i.e., Federal fiscal year (FFY) 2009 and school year (SY) 2009-2010) Table 8 data. Prior to September 2013, the 2010 Table 8 data, including data notes, were displayed on DAC's website with a disclaimer noting that these were the first year of this data collection. Because the Data Accountability Center (DAC) closed in September 2013, OSEP no longer has access to a submission system that would allow States to update the 2010 Table 8 data. However, States can submit data notes with additional explanations, clarifications, or revisions to the data submitted for 2010. OSEP intends to update the 2010 Table 8 data notes document.

At the expiration of the cooperative agreement between OSERS and the DAC, all IDEA Section 618 data (including the Table 8 data and data notes) were moved from DAC's website to the Technical Assistance Coordination Center's (TACC's) website. OSEP intends this website to temporarily host the data while OSEP transitions to another publicly available platform for hosting the IDEA Section 618 data (including Table 8 data).- OSERS is working with staff from TACC about the feasibility of providing the disclaimer about the 2010 Table 8 data on the TACC website while it hosts the Section 618 data files. Once the Table 8 data are posted on the new website, we will post data notes previously posted on the DAC website, including updated data notes, and a notice identifying data quality concerns with the 2010 Table 8 data. These data notes will be included in the updated 2010 Table 8 data notes document, as appropriate.

OSEP is in the process of implementing a number of actions to improve the quality of the Table 8 data. OSEP has implemented a number of automated edit checks into the Table 8 data submission system to provide states immediate feedback on possible data quality concerns. Additionally, OSEP has provided general technical assistance to states on the reporting of Table 8 data via presentations at national conferences and webinars. Furthermore, OSEP is implementing a process, beginning with the review of the FFY 2012 (SY 2012-2013) data that includes a review of the Table 8 data by OSEP staff that are experts in data, as well as OSEP staff that are experts in fiscal monitoring under IDEA. Finally, OSEP has recently published a Notice of Proposed Priority to fund a technical assistance center to build the states' capacity to report high-quality fiscal data (including Table 8 data) to the U.S. Department of Education.

Beginning with the FFY 2011/SY 2011-2012 data submission, OSERS began collecting a number of the IDEA Section 618 data collections, including the Table 8 data collection, via the EDFacts Metadata and Process System (EMAPS). This system allows states to upload data files, including the required Table 8 data, and runs a series of calculations and edit checks to provide the state almost immediate feedback on possible data quality concerns. OSEP intends to discuss the feasibility and cost of implementing a State certification for future submissions of Table 8 data with the Elementary and Secondary Division of the National Center for Education Statistics, which maintains the new Table 8 data submission system.

Issue 2.4-Annual Performance Determinations for LEA MOE Flexibility Eligibility

Throughout this section OSERS believes it would be clearer to use the term "IDEA section 616 determinations" rather than "performance results."

OIG Suggestions:

- 2.9 Consider regulatory action to define a minimum rating that an LEA must achieve on the mandatory evaluation factors to receive a rating of “meets requirements” on its overall performance.

OSERS Response: As the Draft MIR notes, OSERS has previously stated that when making annual IDEA section 616 determinations on the performance of their LEAs, a State must consider the following factors: (1) performance on compliance indicators; (2) valid and reliable data; (3) correction of identified noncompliance; and (4) other data available to the State about the LEA’s compliance with the IDEA, including relevant audit findings. These are what the OIG refers to as the mandatory evaluation factors. While States are required to use the four mandatory factors when making determinations, OSERS has not regulated to define a minimum rating that an LEA must achieve on the mandatory evaluation factors to receive a rating of “meets requirements” on its overall performance. We have considered whether to regulate previously and in light of this report. At this time, OSERS continues to believe that States should have discretion in making annual IDEA section 616 determinations on the performance of their LEAs.

In addition to the four mandatory evaluation factors, OSERS notes that States may consider results on performance indicators and other information when making annual IDEA LEA determinations. OSERS has begun implementing its Results Driven Accountability (RDA) initiative, which is designed to place an increased emphasis on outcomes for students with disabilities. As part of RDA, OSERS is in the process of changing how it makes annual IDEA State determinations to provide a greater focus on results. As OSERS begins to use results data when making annual State determinations, it expects more States will also consider using results data when making annual LEA determinations.

Issue 2.5- Annual Significant Disproportionality Determinations for LEA MOE Flexibility Eligibility

Excerpt from Draft MIR: The second sentence of the first paragraph of Issue 2.5 states:

“Significant disproportionality is a measure used to determine whether specific racial and ethnic groups are significantly overrepresented in special education programs.”

OSERS Comment: In order to accurately reflect the statutory requirement in IDEA § 618(d), we recommend revising the sentence to read “Significant disproportionality is a measure used to determine whether significant disproportionality based on race or ethnicity is occurring with respect to the identification of children as children with disabilities, including identification as children with particular impairments; the placement of children in particular educational settings; and the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.”

Excerpt from Draft MIR: The fourth sentence of the first paragraph on page 16 states:

“The Department responded that for the upcoming reporting year it will collect States’ definitions of significant disproportionality and information by disability categories in which a district was identified with significant disproportionality” (emphasis added).

OSERS Comment: The bolded and underlined information is not correct. In order to accurately describe the information collection requirement, we suggest revising the sentence to read: “...and information on each category (*i.e.*, identification, identification by disability category, placement, and disciplinary actions) in which a district was identified with significant disproportionality based on race and ethnicity.”

OIG Suggestions:

- 2.10 Explore mechanisms, including proposing regulations, that would allow OSEP to ensure that individual States are setting meaningful thresholds for concluding whether significant disproportionality exists at LEAs within their States.

OSERS Response: The Department has most recently addressed this issue in response to the U.S. Government Accountability Office’s (GAO’s) report dated February 2013, entitled “INDIVIDUALS WITH DISABILITIES EDUCATION ACT: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education” (GAO-13-137).¹

The Department is planning to publish a Request for Information (RFI) in the Federal Register. The purpose of the RFI is to solicit information that will assist the Department in determining whether to issue proposed regulations requiring States to use a standard approach to determine which LEAs have significant disproportionality. Information gathered from the RFI will help us determine what actions the Department should take to ensure that individual States are setting meaningful thresholds for concluding whether significant disproportionality exists in LEAs within their States.

Issue 2.6-Annual Notifications for LEA MOE Flexibility Eligibility

OIG Suggestions:

- 2.11 Inform each SEA that it should notify LEAs as to whether they are eligible for MOE flexibility and if so, the amount by which the LEA can reduce its non-Federal special education spending.
- 2.12 Update MOE flexibility guidance to clarify the SEA’s responsibilities in Suggestion 2.11 above to ensure the consistency, accuracy and sufficiency of information that LEAs consider when deciding whether to exercise MOE flexibility.

OSERS Response: We agree that these issues are important and intend to address these issues in our fiscal guidance.

Thank you for the opportunity to review and comment on the Draft MIR. Please let us know if you have questions or want to discuss any of our comments.

¹ For the report and OSERS’ response, see <http://www.gao.gov/assets/660/652437.pdf>.