



**U.S. Department of Education  
Office of Inspector General**



# American Recovery and Reinvestment Act of 2009

**Local Educational Agency Maintenance of Effort Flexibility  
Due to Recovery Act IDEA, Part B Funds**

**Final Audit Report**



**ED OIG/A09-L0011**

**July 2013**

## **NOTICE**

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken, including the recovery of funds, will be made by the appropriate Department of Education officials in accordance with the General Education Provisions Act.

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UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

AUDIT SERVICES

July 25, 2013

**MEMORANDUM**

**TO:** Michael Yudin  
Acting Assistant Secretary  
Office of Special Education and Rehabilitative Services

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

**SUBJECT:** Final Audit Report  
Local Educational Agency Maintenance of Effort Flexibility  
Due to Recovery Act IDEA, Part B Funds, Control Number ED-OIG/A09L0011

The subject final audit report presents the results of our audit of local educational agency use of IDEA's maintenance of effort flexibility provision after receiving supplemental IDEA, Part B funds under the American Recovery and Reinvestment Act of 2009. This report incorporates the comments you provided in response to the draft report.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). Department policy requires that you develop a final Corrective Action Plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this final audit report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after 6 months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Mr. Yudin  
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We appreciate the cooperation given us during this audit. If you have any questions, please contact me at 202-245-6949 or Mr. Hendren at 916-930-2399.

Attachment

Electronic cc: Anthony White, Audit Liaison Officer, Office of Special Education Programs

## **Abbreviations, Acronyms, and Short Forms Used in this Report**

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California	California Department of Education
CEIS	Coordinated Early Intervening Services
C.F.R.	Code of Federal Regulations
DAC	Data Accountability Center
Department	U.S. Department of Education
EIS	Early Intervening Services
ESEA	Elementary and Secondary Education Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GPA	General Purpose Aid
IDEA	Individuals with Disabilities Education Act, Part B
Illinois	Illinois State Board of Education
LEA	Local Educational Agency
Louisiana	Louisiana Department of Education
Maine	Maine Department of Education
MFS	Maintenance of State Financial Support
MOE	Maintenance of Effort
Ohio	Ohio Department of Education
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
SELPA	Special Education Local Plan Area
Table 8	Report on Maintenance of Effort Reduction and Coordinated Early Intervening Services (IDEA, Part B)
Texas	Texas Education Agency

## **Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds**

Control Number ED-OIG/A09L0011

### **PURPOSE**

The American Recovery and Reinvestment Act of 2009 (Recovery Act) placed a heavy emphasis on accountability and transparency and, in doing so, increased the responsibilities of the agencies that are impacted by the Act. The U.S. Department of Education (Department) is ultimately responsible for ensuring that education-related Recovery Act funds reach intended recipients and achieve intended results. This report provides information about how State educational agencies (SEAs) in California, Illinois, Louisiana, Maine, Ohio, and Texas and selected local educational agencies (LEAs) in these States administered certain provisions of the Individuals with Disabilities Education Act (IDEA), Part B and the Department's implementing regulations in response to increased funding awarded under the Recovery Act. Unless otherwise stated, we refer to IDEA, Part B as IDEA throughout the remainder of this report.

The objectives of the audit were to determine whether selected LEAs that were provided increased IDEA funding under the Recovery Act and exercised the maintenance of effort flexibility provision with non-Federal funds:

- (1) were eligible to do so in accordance with the IDEA and applicable regulations and guidance,
- (2) used and accounted for the freed-up funds in accordance with the IDEA and applicable regulations and guidance, and
- (3) experienced adverse impacts after reducing local expenditures for special education programs.

To meet these three objectives, we performed work at the six SEAs listed above, as well as selected LEAs in these States. Because of the role that SEAs play in determining LEA eligibility for MOE flexibility and ensuring that LEAs use freed-up funds properly, we also reviewed whether the six SEAs carried out their LEA oversight responsibilities.

In this report, we refer to both local and State funds received by LEAs to pay for special education and related services as "local" funds. In addition, although we cite IDEA provisions throughout this report, the same requirements are incorporated into Federal regulations at 34 C.F.R. Part 300.

## BACKGROUND

The IDEA, as amended, was enacted to ensure that all children with disabilities between the ages of 3 and 21 have access to a free appropriate public education and that the rights of these children and their parents are protected. States, along with school districts and other local educational agencies (collectively referred to as LEAs), are primarily responsible for providing a free appropriate public education to these children and covering most of the costs of special education programs. The IDEA specifies that the Federal Government also plays a role in assisting State and local efforts to educate children with disabilities to improve results for such children and ensure equal protection under the law. IDEA Part B, § 611 authorizes the Grants to States program to supplement State and local funding for special education programs. Most of the Grants to States program funds awarded to States must be passed through to LEAs.

### **Maintenance of Effort Requirements**

According to IDEA § 613(a)(2)(A), LEAs that receive IDEA funds must meet an annual maintenance of effort (MOE) requirement. Under this requirement, an LEA must not use IDEA funds to reduce the level of local expenditures for educating children with disabilities below the level of those expenditures for the preceding fiscal year, unless it meets the exception provision in IDEA § 613(a)(2)(B) or the adjustment provision in IDEA § 613(a)(2)(C) that allow for reduced spending. Under the exception provision, an LEA does not have to meet the MOE requirement in the following cases: (1) if special education personnel leave voluntarily, (2) if fewer children with disabilities enroll, (3) if the LEA no longer needs to provide exceptionally costly special education services to a disabled child (for example, if the child leaves the school district), and (4) if costly expenditures for long-term purchases have ended. Under the adjustment provision, an LEA may be allowed to reduce its local special education spending from one year to the next by up to a specified amount based on IDEA program funding increases that it receives.

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.

### **LEA Maintenance of Effort Flexibility**

The adjustment to the MOE requirement (referred to as “MOE flexibility” in this report) permits an eligible LEA to 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, Part B, Section 611 subgrant allocation. An LEA is required to meet annual performance requirements and must do so to be eligible for MOE flexibility. The SEA determines whether the LEA’s annual performance meets IDEA’s requirements for providing special education and related services. If in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the State’s performance plan, the SEA must prohibit that

LEA from exercising MOE flexibility for that fiscal year. If an eligible LEA chooses to exercise MOE flexibility and reduce local special education expenditures, the LEA 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 Act of 1965 (ESEA). This includes any activities allowed under Title I, Impact Aid, and other ESEA programs. LEAs that exercise MOE flexibility and also use a portion of their IDEA funds for voluntary coordinated early intervening services (CEIS) in the same year must do so with caution because the two uses are interconnected. CEIS are provided 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.

If an LEA reduces local special education spending by using MOE flexibility, it may be able to maintain this reduced level of expenditures as its MOE baseline in subsequent years. Until the LEA increases the amount it spends for special education and related services using local funds, its MOE baseline will remain at the lower level. However, States still must ensure that students with disabilities receive a free appropriate public education. An LEA would be required to increase local spending if it could not provide the required educational services to children with disabilities at the existing baseline spending level.

If an LEA does not meet its MOE requirement and cannot justify the local spending reduction under the exception or adjustment provisions, the SEA must pay the Department the difference between the amount of local funds the LEA spent and the amount it should have spent educating children with disabilities, using funds for which accountability to the Federal Government is not required.

### **SEA Maintenance of Effort Flexibility**

The State-level MOE flexibility provision in IDEA § 613(j) permits an eligible SEA to reduce the level of expenditures from State sources for the education of children with disabilities by up to 50 percent of any increase in their annual IDEA, Part B, Section 611 grant amount. To be eligible for State-level MOE flexibility, the State 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 also 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. For each fiscal year that an SEA exercises MOE flexibility, the SEA must report the amount of spending it reduced and the activities funded to the Department.



## **Purpose of Maintenance of Effort Flexibility**

MOE flexibility was intended to provide States and LEAs with fiscal relief from the costs of local special education programs when they received a significant increase in Federal special education funding. In 2003, when IDEA was being considered for reauthorization, lawmakers anticipated that the Federal Government would gradually assume a greater role in assisting States and local governments with the excess costs of educating students with disabilities. However, the anticipated increase in Federal funding did not occur. As a result, LEAs generally did not receive increases in Federal funding that would warrant using MOE flexibility before the Recovery Act, which provided an unprecedented increase in IDEA funding to States and LEAs. In 2009, the Department awarded an additional \$11.3 billion in IDEA Recovery Act funds to SEAs, which basically doubled the amount of IDEA funding available to LEAs when combined with the \$11.5 billion of regular IDEA funds that Congress had already appropriated for that year. The increased IDEA funding presented an opportunity for eligible SEAs or LEAs to exercise the available flexibility and reduce the amount they spent educating children with disabilities.

The U.S. Government Accountability Office (GAO) conducted a nationally representative survey of LEAs which showed that nearly a quarter of these LEAs reduced their local special education expenditures because of MOE flexibility and the large influx of Recovery Act IDEA funds. Even with this flexibility, many LEAs reported having difficulty maintaining required levels of local special education spending.<sup>1</sup>

## **RESULTS IN BRIEF**

SEAs and LEAs included in our review did not always comply with applicable laws and regulations associated with exercising MOE flexibility or using and accounting for freed-up funds resulting from exercising MOE flexibility. Three of the six SEAs covered by our review did not perform annual LEA determinations properly, which resulted in five LEAs in one State reducing local special education spending when they should not have. Four of the six SEAs did not properly monitor LEAs' use of and accounting for freed-up funds. Two of these SEAs did not require LEAs to track the use of freed-up funds resulting from exercising MOE flexibility. The LEAs we reviewed in these two States exercised MOE flexibility but did not separately account for the freed-up funds. As a result, we could not assess whether they used the freed-up funds appropriately. In addition to these issues, we identified other reportable issues during our review, as shown in Table 1.

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<sup>1</sup> GAO-11-885SP "Recovery Act Education Programs: Survey of School Districts' Uses of Funds," September 2011, an E-supplement to GAO-11-804 "Recovery Act Education Programs: Funding Retained Teachers, but Education Could More Consistently Communicate Stabilization Monitoring Issues," September 2011.

**Table 1: Reportable Compliance Issues Identified at Selected SEAs and LEAs**

SEA Compliance Issues	California	Illinois	Louisiana	Maine	Ohio	Texas
<b>Eligibility to Exercise MOE Flexibility</b>						
SEA performed annual LEA determinations improperly	Yes	No	No	Yes	Yes	No
Ineligible SEA exercised flexibility	N/A	N/A	N/A	Yes	N/A	N/A
<b>Use of and Accounting for Flexibility Reductions (a)</b>						
SEA monitoring of LEAs' use of freed-up funds was insufficient	Yes	Yes	N/A	N/A	Yes	Yes
SEA used funds made available through State-level flexibility reduction inappropriately	N/A	N/A	N/A	Yes	N/A	N/A
LEA Compliance Issues	California	Illinois	Louisiana	Maine	Ohio	Texas
<b>Eligibility to Exercise MOE Flexibility</b>						
Ineligible LEAs exercised flexibility (c)	Yes	No	No	No	No	No
<b>Use of and Accounting for Flexibility Reductions (a) (b)</b>						
LEAs did not account for specific uses of freed-up funds (d) (e)	No	Yes	N/A	N/A	Yes	N/A
LEA exercised MOE flexibility by more than the maximum allowed	Yes	No	N/A	N/A	No	N/A
LEAs used voluntary CEIS by more than the maximum available (f) (g)	Yes	Yes	No	N/A	Yes	Yes
N/A means not applicable. (a) None of the LEAs in Louisiana or Maine exercised MOE flexibility. (b) Texas' data were not sufficient for identifying the LEAs that exercised MOE flexibility. We did not review LEA use of freed-up funds in Texas because we could not identify which LEAs exercised MOE flexibility. (c) This condition existed at five LEAs. (d) This condition existed at the two LEAs we reviewed in both Illinois and Ohio. There are potentially other LEAs in both States with this condition. (e) We only reviewed use of funds at the two selected LEAs in California, Illinois, and Ohio. (f) This condition existed at one LEA in both California and Illinois, seven LEAs in Ohio, and two LEAs in Texas. (g) Our review was limited to LEAs that SEAs reported as having reserved voluntary CEIS amounts by more than the maximum amount available. There are potentially other LEAs in one or more of these States that reserved and/or used excessive amounts for voluntary CEIS.						

We did not identify any adverse impacts, such as reduced services or unfavorable educational outcomes for students with disabilities at the LEAs that reduced local expenditures using MOE flexibility. The lack of adverse impacts may be attributed to our review being conducted before these types of impacts were realized. Because the influx of Recovery Act IDEA funds occurred at about the same time that LEAs exercised MOE flexibility, it is unlikely that LEAs that reduced local spending due to MOE flexibility noticed a decrease in overall funding for special education programs, as described further in the last section of the Results in Brief.

## Eligibility to Exercise MOE Flexibility

Two of the six selected SEAs did not have an adequate system<sup>2</sup> for determining LEA eligibility for MOE flexibility in accordance with applicable laws, regulations, and guidance. SEAs are allowed some discretion in carrying out the LEA determinations, but they were required by the Department's Office of Special Education Program's (OSEP) guidance to include, at a minimum, an assessment of the following elements:

- performance on compliance indicators;
- valid and reliable data;
- correction of identified noncompliance; and
- other data available to the State about the LEA's compliance with the IDEA, including relevant audit findings.

SEAs used the results of these assessments to identify LEAs that were eligible to exercise MOE flexibility. Both Ohio and Maine omitted three of the four required elements when they assessed LEAs' performance in providing special education and related services.

Although we did not identify deficiencies in California's system for determining LEA eligibility, the SEA miscalculated the overall determinations for 25 of the State's 981 LEAs and incorrectly determined that they were eligible for MOE flexibility. We determined that 5 of the 25 LEAs exercised MOE flexibility after receiving supplemental IDEA funds under the Recovery Act based on the SEA's incorrect determinations. As a result, these five LEAs spent about \$3.4 million less than they should have spent on special education programs and services in the year that they exercised MOE flexibility. We did not identify issues with the other three SEAs' determination systems.

Based on information that Maine provided during the audit, we concluded that the State exercised MOE flexibility at the SEA level. However, Maine did not meet the SEA MOE flexibility eligibility requirements in IDEA § 613(j). As a result, Maine spent less on special education programs and services than it should have in the years that it inappropriately exercised MOE flexibility. Even though some LEAs in Maine were eligible, no LEAs actually reduced local special education spending under the MOE flexibility provision. The two LEAs we reviewed in Maine were not aware of the flexibility provision and did not know that they had been eligible.

Louisiana had 14 LEAs that were determined eligible, but none exercised MOE flexibility because Louisiana provided incomplete information in its notifications. When Louisiana notified these LEAs of the amount of Federal funding increases that qualified them for local spending reductions, it omitted the amount available as a result of supplemental Recovery Act IDEA funds. Thus, each of the 14 LEAs was notified of a significantly smaller MOE flexibility

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<sup>2</sup> Our conclusions on SEAs' determination systems are limited to the one year the SEA designated for identifying LEAs that were eligible for MOE flexibility due to the increase in IDEA funding under the Recovery Act. Table 3 in Finding No. 1 of this report lists the designated determination year for each selected State.

reduction being available. If Louisiana had included Recovery Act funds in their notifications, these LEAs may have chosen to exercise MOE flexibility.

### **Use of and Accounting for Freed-Up Funds**

Some LEAs in our review that exercised MOE flexibility did not account for the freed-up funds in accordance with applicable laws, regulations, and guidance. The two LEAs we reviewed in both Illinois and Ohio did not track how they used freed-up funds. As a result, we could not determine whether these LEAs used freed-up funds appropriately. Additionally, one LEA in California exercised MOE flexibility by more than the maximum allowed and at least one LEA in California, Illinois, Ohio, and Texas used IDEA funds for voluntary CEIS in amounts exceeding the maximum available. For both of these situations, LEAs spent less than they should have for special education programs and services.

Furthermore, California, Illinois, and Ohio did not properly monitor LEAs' use of freed-up funds. For example, Illinois relied on the results of LEAs' audits to determine whether they used these funds in accordance with Federal requirements. Illinois officials stated that they were not aware of any audit findings that would indicate problems with how LEAs were spending freed-up funds. Texas did not have a timely system for identifying LEAs that exercised MOE flexibility.

### **Impacts Resulting From Spending Reductions Under the Flexibility Provision**

SEA program and fiscal officials from the four States in which LEAs exercised MOE flexibility did not have information about LEAs in their States experiencing adverse impacts to special education programs, such as reduced services or unfavorable educational outcomes, after reducing local special education spending because of supplemental Recovery Act IDEA funding. At the time of our review, SEA officials in Illinois, Ohio, and Texas had not collected information on the level of LEAs' local special education spending in the year following the year that LEAs exercised MOE flexibility and reduced spending. Although California had subsequent year spending information, the data for many of the LEAs were not reported to California at the LEA level.<sup>3</sup> As a result, we could not compare year-to-year local spending for LEAs that exercised MOE flexibility to determine whether they maintained the reduced local spending levels in the year after they exercised MOE flexibility. SEAs may not have known about any adverse impacts of LEAs exercising MOE flexibility in these four States at the time of our audit.

The relationship between the amount of local special education spending reductions possible under MOE flexibility and LEAs' total special education program funding levels, when supplemental Recovery Act IDEA funds are included, may explain why officials were not aware of adverse impacts resulting from LEAs' use of MOE flexibility at the time of our review. The Recovery Act IDEA grant basically doubled the Federal Government's support for special education programs in fiscal year (FY) 2009–2010, while allowing LEAs that were eligible for

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<sup>3</sup> In California, Special Education Local Plan Areas are responsible for collaborating with county agencies and school districts to facilitate education programs and services for students with special needs. Each of these administrative units may have one or more LEAs within its geographic boundaries.

MOE flexibility an unprecedented opportunity to reduce local special education spending by up to 50 percent of the increase in Federal funding. As illustrated in the hypothetical example in Table 2 below, if an eligible LEA received an IDEA grant allocation of \$150,000 in the fiscal year prior to the Recovery Act (FY 2008–2009) and \$300,000 after the Recovery Act was enacted (FY 2009–2010), the \$150,000 increase in Federal funds would allow the LEA to reduce local spending on special education programs by up to \$75,000. However, the local spending reduction might not be apparent because overall spending on special education programs would have increased by \$75,000 from one period to the next.

**Table 2: Impact of a Hypothetical LEA’s MOE Flexibility Reduction in Relation to Overall Special Education Funding at the LEA**

Special Education Funding in FY 2008–2009			Special Education Funding in FY 2009–2010		
Federal IDEA Grant Allocation	Local Special Education Expenditures	Total Special Education Funding	Federal IDEA Grant Allocation	Local Special Education Expenditures	Total Special Education Funding
\$150,000	\$850,000	<b>\$1,000,000</b>	\$300,000 (a)	\$775,00 (b)	<b>\$1,075,000</b>
(a) This example includes both regular IDEA funding and an additional \$150,000 in Recovery Act IDEA funding for FY 2009–2010. (b) In this example, the LEA exercised the flexibility provision by reducing local special education expenditures by \$75,000 or 50 percent of the increase in Federal funding.					

In the above example, the Recovery Act IDEA funding received in FY 2009–2010 increased the Federal share of total special education funding from about 15 percent to about 28 percent. Furthermore, total special education funding from all sources increased by \$75,000 (a 7.5 percent increase) even though the LEA reduced local spending by \$75,000 using MOE flexibility. Thus, overall special education funding increased despite the LEA’s local spending reduction.

As the above example shows, short-term impacts could be masked or non-existent because of the large increase in Federal IDEA funds provided under the Recovery Act. However, LEAs’ use of MOE flexibility could have long-term implications for special education programs. As stated in the Department’s Recovery Act guidance,<sup>4</sup> an LEA that reduces local spending under MOE flexibility may maintain its spending at this lower level until the LEA increases local spending on its own. Because LEAs are required to provide a free appropriate public education, they might need to increase spending to meet this requirement in the years after the Recovery Act funds are no longer available. Depending on the fiscal situation of the LEA, this could potentially affect the services provided under IDEA and aspects of other LEA educational programs where funds would have to be transferred from.

We reviewed local spending decisions for the year after LEAs exercised MOE flexibility at those LEAs in our review that had reduced spending under the flexibility provision (six LEAs in total). We could not perform this review at the two Texas LEAs in our review because one LEA chose

<sup>4</sup>“Funds for Part B of the Individuals with Disabilities Education Act Made Available Under the American Recovery and Reinvestment Act of 2009,” published April 2009 and revised September 2010.

not to exercise MOE flexibility and the other LEA was not eligible.<sup>5</sup> The information we obtained from the six LEAs showed that spending decisions in the year following LEAs' use of MOE flexibility varied. For example, both California LEAs increased spending to meet the requirement for a free appropriate public education. These increases brought both LEAs' spending above the spending levels that existed prior to exercising the MOE flexibility. In Illinois, both LEAs maintained their spending at the reduced level. LEA officials stated that they had no concerns about meeting the free appropriate public education requirement at the lower spending levels.

This report makes recommendations for the first two objectives. However, the report does not make any recommendations in regards to our third audit objective because at the time of our review, we did not identify evidence of actual or potential adverse impacts resulting from LEAs reducing local special education spending using MOE flexibility.

In addition to the results presented in this report for our three audit objectives, we also identified an issue with data reliability that we discuss after the report's findings in the section, "Other Matter—Reliability of MOE Data that States Reported to OSEP."

We provided a draft of this audit report to the Office of Special Education and Rehabilitative Services (OSERS) on April 15, 2013. With its cover letter dated June 3, 2013, OSERS included an attachment labeled "OSERS Comments." In its comments, OSERS:

- concurred with three recommendations, but did not concur with two other recommendations;
- only provided preliminary concurrence with three other recommendations because it did not have sufficient information to finalize its concurrence with the recommendations until OSEP had an opportunity to review the States' responses;
- withheld a decision on whether to concur with two other recommendations and could not comment on the information in the recommendations because OSEP needed additional information regarding California's administrative structure;
- partially concurred with two recommendations and could not comment on the information in these recommendations as they related to California because OSEP needed additional information regarding California's administrative structure.

Additionally, OSERS provided comments and suggestions on four items related to the report's background section.

The full text of OSERS' comments on the draft report are included as an attachment to this report. Additionally, OSERS' comments to specific audit recommendations and suggestions are summarized at the end of each finding and the Other Matter. We considered OSERS' comments related to the background section and subsequently revised that report section where proposed changes were deemed necessary. We did not materially modify any of our findings or recommendations as a result of OSERS' comments.

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<sup>5</sup> After selecting two Texas LEAs to include in our review, we learned that the data used to select LEAs was not reliable because the SEA's information system did not differentiate between local spending reductions using MOE flexibility and reductions attributed to the exceptions in IDEA § 613(a)(2)(B).

## **FINDING NO. 1 – Eligibility to Exercise MOE Flexibility**

LEAs in one State covered by our review exercised MOE flexibility even though they were not eligible to do so.<sup>6</sup> This occurred because the SEA miscalculated the results for one of its required indicators when performing the annual LEA evaluation used to determine whether individual LEAs meet Federal requirements related to the IDEA program. In addition, we found that two other SEAs covered by our review did not properly perform these annual LEA determinations, which have a bearing on LEAs' eligibility for MOE flexibility. We did not identify issues with the other three SEAs' determination systems. Further, the information we obtained from one SEA showed that it exercised MOE flexibility at the State level and reduced special education spending despite not being eligible.

We also determined that some LEAs in Maine and Louisiana that were eligible for MOE flexibility did not receive complete information from their SEAs regarding their eligibility. This may have prevented eligible LEAs in both States from using MOE flexibility to reduce local spending. The two LEAs we reviewed in Maine were not aware of the flexibility provision and did not know that they had been eligible. SEAs are not specifically required to notify LEAs of their eligibility for MOE flexibility. Louisiana provided LEAs with incomplete information about the amounts available for MOE flexibility reductions because it omitted the Recovery Act IDEA funds when determining the amounts by which LEAs could reduce local spending. Because the supplemental Recovery Act funds represented most of each LEA's IDEA funding increase, LEAs were notified that they had significantly smaller MOE flexibility reductions available than was the case. If Louisiana had notified the 14 eligible LEAs of the correct amounts available to reduce local spending by, some LEAs may have chosen to exercise MOE flexibility.

### **LEA Eligibility to Exercise MOE Flexibility**

SEAs in two States (Maine and Ohio) covered by our review did not include all of the required elements in their annual LEA determinations. This could have resulted in Ohio LEAs that were not eligible for MOE flexibility reducing local special education spending. Because none of the LEAs in Maine exercised MOE flexibility, the improper determinations did not result in ineligible LEAs reducing local special education spending. California also did not perform the annual determinations for some LEAs correctly. California miscalculated the FY 2007–2008 LEA determinations for one required indicator, which resulted in five ineligible LEAs reducing local special education spending by exercising MOE flexibility.

According to IDEA § 616(a)(3), States are required to monitor LEAs using quantifiable indicators related to specific priority areas and measure LEA performance in those same priority areas. IDEA § 616(b)(2)(B) requires each State to collect valid and reliable information and report annually to the Secretary on LEA performance related to the specific priority areas (referred to as “annual determinations”). Pursuant to this provision, OSEP provides SEAs with guidance for completing the LEA annual determinations. The LEA annual determinations are used to measure LEA compliance with the requirements of IDEA and to assess LEA eligibility for MOE flexibility. Each SEA included in our review performed required annual

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<sup>6</sup> There were no LEAs that exercised MOE flexibility in two of six States covered by our review.

determinations and maintained at least some LEA determination records. We analyzed the data applicable to the determination year to identify the number of LEAs that the SEAs determined were eligible for MOE flexibility. Table 3 shows the results of our analysis.

**Table 3: LEA Eligibility for MOE Flexibility by State**

SEA	Total Number of LEAs With a Determination (a)	Number of LEAs That Were Determined Eligible for MOE Flexibility (a)	Percent of LEAs Determined Eligible for MOE Flexibility	Determination Year Used to Identify Eligible LEAs (b)
California	981	961	97.96	FY 2007–2008
Illinois	871	710	81.52	FY 2007–2008
Louisiana	103	14	13.59	FY 2008–2009
Maine	155	109	70.32	FY 2007–2008
Ohio	890	888	99.78	FY 2008–2009
Texas	1258	428	34.02	FY 2007–2008
(a) Source: SEA data. These numbers were not adjusted for LEA eligibility issues we identified during our audit. (b) SEAs could use the LEA determinations for either FY 2007–2008 or FY 2008–2009 to establish LEA eligibility for MOE flexibility.				

SEAs are allowed some discretion in carrying out the LEA determinations, but they were required by OSEP’s guidance to include, at a minimum, an assessment of the following elements:

- performance on compliance indicators;
- valid and reliable data;
- correction of identified noncompliance; and
- other data available to the State about the LEA’s compliance with the IDEA, including relevant audit findings.

After an SEA has assessed LEAs’ performance on those required elements and any additional elements that it chooses to include in the determinations, it must issue a determination rating to each LEA. There are four categories of determination ratings: (1) meets requirements, (2) needs assistance, (3) needs intervention, and (4) needs substantial intervention. LEAs that receive a determination of other than “meets requirements” are not eligible for MOE flexibility and are subject to enforcement actions by the SEA to improve performance.

In addition to the SEAs performing the annual determinations, which includes at a minimum the four elements in the bullets above, SEAs must also separately assess LEAs annually for significant disproportionality, which is a metric used to determine whether children in specific racial or ethnic categories are disproportionately identified as being disabled. Each State has discretion in defining what constitutes significant disproportionality for its LEAs, as long as



the State's definition is based on an analysis of quantitative data. An LEA that is found to have significant disproportionality is not eligible for MOE flexibility.

Maine did not include the last three required elements shown in the bullets above in its FY 2007–2008 determinations. This deficiency occurred because Maine did not have written policies and procedures or adequate systems of internal control governing the annual LEA determination process. For example, the SEA lacked procedures and related controls for reviewing audit findings for purposes of making LEA determinations.

During a monitoring visit in October 2009, OSEP determined that Ohio did not include all of the required elements in its annual determinations. OSEP's review covered the FY 2008–2009 determination year, which was the year that Ohio chose to use in determining whether LEAs were eligible for MOE flexibility as a result of receiving Recovery Act IDEA funding. OSEP's monitoring report stated that Ohio did not (1) evaluate whether LEAs had submitted valid and reliable data for the determination process, (2) have a general supervision system that was reasonably designed to identify and correct noncompliance in a timely manner, or (3) consider LEA-specific audit findings. Like Maine, Ohio did not include the last three required elements shown above when completing annual LEA determinations. OSEP was also concerned that Ohio's threshold for concluding whether significant disproportionality existed was too high, making it unlikely that any LEA would be identified as having significant disproportionality.

Ohio provided a corrective action plan to OSEP addressing the deficiencies noted in the monitoring report related to the LEA determination process. We reviewed Ohio's June 2011 policies and procedures for LEA determinations and confirmed that they included the required elements.

Because Ohio's annual LEA determination process for FY 2008–2009 was not conducted in accordance with IDEA's requirements and OSEP guidance, Ohio cannot ensure that only eligible LEAs exercised MOE flexibility. As shown in Table 3 above, only 2 of 890 LEAs in Ohio were not eligible to exercise MOE Flexibility based on FY 2008–2009 determinations. Ohio did not identify any LEAs that had significant disproportionality.

California officials advised us of a miscalculation in the FY 2007–2008 LEA determinations for one required indicator. This indicator (Indicator 11) measured the percent of students who were evaluated for special education services within 60 days of receiving parental consent. California calculated the percent for Indicator 11 twice: once in April 2009 for the annual State Performance Plan it submitted to the Department, and once in May 2009 for the official LEA determinations. According to California officials, California's information system incorrectly excluded some students in its May 2009 calculation, which meant that California included significantly fewer students in its calculation for Indicator 11. As a result, more LEAs met the annual determination, or California could not make a valid determination because there were not enough students to perform the calculation.

California computes LEAs' overall determination ratings as an average of the sum of individual indicator values. Indicators that are not applicable to an LEA are excluded from the overall computation, as are indicators for which there were too few students to compute a meaningful measure. California officials estimated that the miscalculation associated with Indicator 11

resulted in 25 LEAs incorrectly receiving an overall determination rating of “meets requirements” for FY 2007–2008. The officials also stated that the LEAs did not have an opportunity to review the data that were used in the determination.

If the 25 LEAs had received other than a “meets requirements” overall determination rating for FY 2007–2008, they would not have been eligible for MOE flexibility in FY 2009–2010 after receiving Recovery Act IDEA funds. California officials determined that only 5 of the 25 ineligible LEAs had actually exercised MOE flexibility and reduced local special education spending, which resulted in improper spending reductions for special education programs and services totaling more than \$3.4 million. Table 4 below lists the five ineligible LEAs that exercised MOE flexibility and their corresponding improper spending reductions.

**Table 4: Ineligible California LEAs That Exercised MOE Flexibility Based on Indicator 11 Errors**

LEA Name	Improper Local Spending Reductions
Fullerton Elementary School District	\$1,204,436
Petaluma City Elementary School District	\$249,832
Santa Rosa High School District	\$948,977
San Rafael City Elementary School District	\$420,428
Washington Unified School District	\$582,738
<b>Total</b>	<b>\$3,406,411</b>

California did not have adequate controls to ensure that the coding in its computer system that performed the calculations used for Indicator 11 was proper and did not perform necessary reconciliations to ensure that the data obtained through subsequent calculations were reliable for the FY 2007–2008 LEA determinations.

**SEA Eligibility to Exercise MOE Flexibility**

Based on the information that Maine provided during the audit, the State exercised MOE flexibility at the SEA level. However, Maine did not meet the eligibility requirements for State-level MOE flexibility. As a result, Maine spent less than it should have for special education programs and services in the years that it inappropriately exercised MOE flexibility. According to IDEA § 613(j), States can exercise MOE flexibility only if they have a determination status of “meets requirements” and use State funds to pay or reimburse 100 percent of the non-Federal share of the costs for special education and related services that its LEAs incurred. Maine was not eligible for MOE flexibility because it received an annual performance determination of “needs assistance” from OSEP for FY 2006–2007 through FY 2010–2011. Maine was also not eligible for MOE flexibility because it did not provide 100 percent of the non-Federal share of the costs of special education for all LEAs. For example, the two LEAs we reviewed in Maine spent some of their own funds to pay for special education costs.

Due to the complexity of Maine’s school funding model, we could not quantify the exact amount by which Maine reduced spending for special education programs and related services.

However, based on the evidence we obtained, we concluded that it totaled no more than the \$14.4 million that Maine reduced general purpose aid (GPA) for schools by in the FY 2010–2011 biennial State budget. This GPA budget reduction should have been spread across various programs and services, including special education, according to Maine’s school funding model. According to the documentation that Maine officials provided, Maine reduced the GPA budget by \$14.4 million over two fiscal years: \$11.6 million in FY 2009–2010 and \$2.8 million in FY 2010–2011.

Maine officials initially said they believed that the State was eligible for the State-level special education spending reduction because of information presented about the SEA flexibility provision during a conference call that the Department had with multiple States in spring 2009. Maine officials indicated that the guidance provided during the call focused on the requirement that 100 percent of the special education funding be provided by the State. However, our review showed that Maine did not provide the required 100 percent funding. Officials further stated that during the conference call, the Department did not mention the requirement to have a determination status of “meets requirements” to exercise MOE flexibility.

After we advised Maine officials that the State was not eligible to reduce spending at the SEA level as a result of the supplemental Recovery Act IDEA funding, the officials informed us that the actions taken during budget enactment did not represent a spending reduction using MOE flexibility. Officials told us that instead, the budget reduction represented an adjustment to the overall GPA amount provided to schools and not to the special education allocation that schools received as part of their total GPA allocation. However, Maine officials did not further explain the basis for the budget reduction they had taken.

During the audit we obtained the following information regarding Maine’s exercise of MOE flexibility at the State level.

- Maine officials provided written and oral responses to our questions about its use of MOE flexibility. This information showed that Maine decided to exercise State-level flexibility in April 2009.
- Documentation showed that Maine officials calculated the \$14.4 million State-level budget reduction based on the total local special education spending reductions that LEAs in the State would have been eligible for using MOE flexibility.
- The enacted FY 2010–2011 biennial State budget identified the \$11.6 million GPA reduction taken by Maine in the first year. The language in the State budget law referred to the reduction as “Portion to be paid with Federal IDEA balance.” Further, Maine officials prepared an education-related State law summary that listed both the \$11.6 million and \$2.8 million GPA reductions and referenced IDEA as the reason for the reductions.

Based on this evidence, we concluded that Maine inappropriately reduced State special education spending by exercising MOE flexibility at the State level.

During our exit conference with Department officials we were informed that Maine had provided additional information to the Department. This information included a summary report showing multiyear special education cost data across the State agencies that provide financial support for special education. We contacted Maine officials about, and performed a limited review of, the data in this summary report. Our limited review included comparing the special education data shown in this summary report to the data in a similar report obtained from the Department during the audit. We identified differences between the two reports in the number of funding sources, GPA allocation amounts, and student counts. We did not modify our conclusion that Maine inappropriately reduced State special education spending by exercising MOE flexibility at the State level.

## **RECOMMENDATIONS**

We recommend that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 1.1 Conduct additional program monitoring in Maine to ensure that annual LEA determinations are performed in accordance with applicable Federal requirements.
- 1.2 Verify that Ohio includes the required elements shown in its policies and procedures when it conducts annual LEA determinations.
- 1.3 Verify that California has implemented appropriate controls over data calculations used in indicator determinations.
- 1.4 Require the five California LEAs to revise their FY 2009–2010 MOE baseline to reflect the amount that they should have spent on special education programs absent the improper spending reductions. These LEAs should also be required to recalculate MOE requirements for subsequent years, using the revised FY 2009–2010 MOE amount as the baseline spending level that should have been met or exceeded in FY 2010–2011. Lastly, determine the amount that California is required to remit to the Department as a result of the five ineligible LEAs improperly reducing local special education spending.
- 1.5 Determine whether Maine inappropriately reduced the amount spent for special education and related services by exercising MOE flexibility. If Maine did inappropriately exercise MOE flexibility at the State level, determine the actual fiscal impact of this action and implement appropriate corrective actions, including requiring the SEA to restore special education funding reductions.

## **OSERS Comments**

OSERS concurred with the finding that Maine and Ohio did not include all of the required indicators when making LEA annual determinations. OSERS also concurred with the associated Recommendations 1.1 and 1.2.

For Recommendation 1.3, OSERS indicated that it was initially concurring with the finding that California incorrectly calculated LEAs' compliance with Indicator 11 and the associated recommendation. However, OSERS commented that it reserved the right to revise its initial decision based on information provided by the State.

For Recommendation 1.4, OSERS commented that it could only partially concur with the recommendation. OSEP needed additional information on California's administrative structure for special education programs to determine the accuracy of the finding regarding five ineligible California LEAs that reduced local special education spending using MOE flexibility and whether a financial recovery is warranted. It was OSEP's understanding, based on information provided by the State in prior monitoring visits and section 56205(a) of the California Education Code, that each Special Education Local Plan Area (SELPA) submits a plan that provides assurances to the State that it will meet each of the requirements in IDEA section 613(a), including maintenance of effort requirements. California makes IDEA, Part B, Section 611 subgrants under 34 C.F.R. § 300.705 to eligible SELPAs, which then distribute Part B funds to school districts that are members of the SELPA. Based on OSEP's understanding of California's administrative structure, provisions in 34 C.F.R. § 76.50, and the definitions of "subgrant" and "subgrantee" in 34 C.F.R. § 80.3, the Part B funds that SELPAs provide to school districts are not considered subgrants under Part B of the IDEA. Instead, it is the SELPA that is the recipient of the subgrant under 34 C.F.R. § 300.705. OSEP needed to assess how the State determines whether the SELPA is eligible to exercise MOE flexibility. OSERS commented that California reported information on SELPAs, districts, and individual elementary and secondary schools when providing FY 2009–2010 Table 8 data on LEA MOE reductions and CEIS.

OSERS commented that it did not concur with the finding and corresponding Recommendation 1.5 regarding Maine inappropriately reducing State special education spending by exercising flexibility. According to OSEP, after Maine initially provided inconsistent information, it subsequently provided documentation indicating that it used State Fiscal Stabilization Funds (SFSF) for purposes of meeting the maintenance of State financial support (MFS) requirement in IDEA § 612(a)(18) and that it did not take the MFS reduction under IDEA § 613(j). On March 29, 2013, OSEP advised Maine that based on the documents submitted by the State, it concluded that Maine (1) properly treated Stabilization funds as State funds for the purpose of meeting the MFS requirement under Part B of the IDEA for 2008–2009, (2) met the MFS requirement for 2008–2009, and (3) did not exercise the flexibility provision at 34 C.F.R. § 300.230.

### **OIG Response**

We acknowledge OSERS' decision to initially concur with Recommendation 1.3 pending receipt of additional information from State officials. During audit resolution, OSEP should request documentation from California related to its calculations for the required Indicator 11 to verify that its FY 2007–2008 calculations that led to ineligible LEAs being identified as eligible for MOE flexibility were limited to those five LEAs we identified in the finding. In addition, OSEP should verify whether California has implemented appropriate controls to ensure that the coding in the computer system that performed the calculations used for Indicator 11 is proper and that the agency performs reconciliations to ensure that the data obtained through subsequent calculations are reliable.

After considering OSERS' comments to Recommendation 1.4 in conjunction with information we obtained during the audit, the OIG maintains its position that five ineligible California LEAs improperly reduced MOE by exercising MOE flexibility in FY 2009–2010. At the time of our audit, California's FY 2009–2010 Table 8 data listed all five of these districts as LEAs that received a Section 611 subgrant from the State. For these five LEAs, California confirmed that the reductions taken were under the MOE flexibility provision. Further, California's written policy and actual practice was to assess LEA performance and significant disproportionality at the district level. California used the results of its annual assessments to determine whether individual school districts were eligible to exercise MOE flexibility. However, if OSEP confirms its understanding that the SELPAs rather than the districts are the subrecipients that may exercise MOE flexibility, then OSEP should verify that California is compliant in administering the related provisions of IDEA and the Department's implementing regulations at the SELPA level.

After considering OSERS' comments to Recommendation 1.5, the OIG maintains its position that Maine inappropriately reduced State special education spending by exercising flexibility even though it was not eligible. According to information obtained during the audit, Maine reduced the GPA budget by \$14.4 million over two fiscal years: \$11.6 million in FY 2009–2010 and \$2.8 million in FY 2010–2011. Among other evidence indicating that Maine had exercised flexibility, Maine officials prepared an education-related State law summary that listed both GPA reductions and referenced IDEA as the reason for the reductions. Although the OIG's finding involved special education reductions that Maine had taken in FY 2009–2010 and FY 2010–2011, OSERS commented on Maine's MFS requirement under IDEA, Part B for 2008–2009.

As stated in the finding, the OIG's limited analysis of Maine's special education MFS information showed that Maine's data changed over time in the number of funding sources, GPA allocation amounts, and student counts. We identified these differences when comparing Maine's FY 2010–2011 summary level data that OSEP provided to the OIG in March 2012 to data covering the same period that OSEP provided more than a year later in March 2013. Further, the latter file showed that SFSF expenditures totaled about \$2.5 million for FY 2009–2010 and FY 2010–2011 combined, while the GPA budget reduction to special education programs totaled as much as \$14.4 million for these two fiscal years. As a result, we concluded that SFSF alone would have been inadequate to cover the GPA budget reduction to special education programs discussed in the finding.

According to the March 2013 data, the SFSF expenditures comprised less than 1 percent of Maine's total special education MFS, while the GPA allocation funding source comprised about 80 percent of Maine's total special education MFS. OSERS' comments do not indicate whether OSEP performed any procedures to verify supporting information provided by Maine for the amounts shown as the GPA allocation for its FY 2009–2010 and FY 2010–2011 MFS.

## **FINDING NO. 2 – Use of and Accounting for Freed-Up Funds**

LEAs did not always administer freed-up funds in accordance with Federal requirements. Freed-up funds are those funds that an SEA or LEA has available to spend for other educational purposes after it has exercised MOE flexibility and reduced the amount of local funds spent on special education and related services. Some LEAs did not account for the freed-up funds and therefore could not tell us how they used these funds. As a result, we could not assess whether these LEAs used the freed-up funds in accordance with Federal requirements. SEAs in the States in our review where eligible LEAs reduced local special education spending using MOE flexibility did not properly monitor LEAs' use of freed-up funds. In addition, one SEA that exercised MOE flexibility at the State level did not use the funds made available through the spending reduction in accordance with Federal requirements. Furthermore, SEAs and LEAs in our review did not always properly administer the provisions for using IDEA funds for voluntary CEIS in relation to the use of the MOE flexibility provision.

### **LEA Use of Freed-Up Funds**

If an LEA reduces local special education expenditures using MOE flexibility, the LEA must use an equal amount of local funds for ESEA-related activities or purposes. We were unable to determine whether the LEAs in our review from Illinois and Ohio used the funds for ESEA-related activities or purposes. Illinois did not require the two LEAs in our review, Community Unit School District 300 and Indian Prairie School District (Indian Prairie), to track the specific uses of their freed-up funds. The LEAs did not separately account for freed-up funds expenditures in their financial system. As a result, we were unable to trace records that supported amounts spent using freed-up funds to ensure that they were spent appropriately.

Officials at the two Ohio LEAs in our review, Columbus City Schools and Reynoldsburg City School District, stated that the freed-up funds were used to pay for jobs. However, the LEAs were not required by the State to track the use of freed-up funds and their financial systems did not separately account for the freed-up funds expenditures. Neither LEA could provide adequate support to show that they spent the freed-up funds appropriately.

Both of the California LEAs in our review were able to demonstrate that freed-up funds were used for ESEA-related activities. In Texas, the two LEAs we selected were identified by the State as having exercised MOE flexibility and reduced local special education spending in FY 2009–2010. However, we subsequently determined that Texas had misreported data on LEAs' use of MOE flexibility statewide and that neither LEA we selected had used MOE flexibility after receiving supplemental IDEA funds under the Recovery Act. Because the SEA misreported these data, we were unable to determine which LEAs in Texas exercised MOE flexibility or whether those that did used freed-up funds appropriately.

### **SEA Monitoring of Freed-Up Funds**

State monitoring of LEAs' use of freed-up funds after exercising MOE flexibility was not sufficient to ensure that the funds were spent on ESEA-related activities or purposes in accordance with Federal law. Three of the four States (California, Illinois, and Ohio) in our review reporting that LEAs had exercised flexibility did not have proper controls or systems to

determine whether LEAs that exercised flexibility used freed-up funds appropriately. Texas did not perform monitoring activities related to LEAs' MOE spending reductions, including how freed-up funds were used, at the time that LEAs may have exercised flexibility.

As a condition of receiving Federal grant funds, SEAs agree to perform important oversight responsibilities and are required to monitor grant and subgrant activities to ensure compliance with applicable Federal requirements and that performance goals are being achieved. According to IDEA § 616(a)(1), States are required to monitor the implementation of Federally funded programs serving children with disabilities. 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. Further, 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 MOE flexibility, there is an increased risk that LEAs will make errors when administering funds, LEA noncompliance will not be detected, or funds will be misused.

California did not have appropriate monitoring controls in place to ensure that LEAs used the freed-up funds derived from local special education spending reductions in accordance with Federal requirements. California provided information to LEAs about the freed-up funds requirements, but did not monitor LEAs' actual use of freed-up funds to ensure that the funds were used only for ESEA-related activities or purposes. As a result, California did not know how LEAs used their freed-up funds. California officials stated that they were not provided funding to monitor how LEAs were using freed-up funds. California's lack of monitoring could have resulted in undetected noncompliance and errors at the LEA level.

Illinois 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 or report how they used the funds. Although Illinois reviewed LEAs' grant application budgets for planned uses of freed-up funds, it relied on the results of LEAs' audits to determine whether LEAs used these funds in accordance with Federal requirements. Illinois officials stated that they were not aware of any audit findings that would indicate problems with how LEAs were spending freed-up funds. Illinois officials also said that they did not believe that Federal regulations or the Recovery Act guidance explicitly required SEAs to monitor, or LEAs to track, the specific uses of freed-up funds. The Illinois LEAs included in our review could not demonstrate how they spent the freed-up funds.

Ohio also provided guidance to its LEAs regarding the use of freed-up funds but did not monitor how the LEAs used the funds. Ohio did not change its normal monitoring processes to ensure that freed-up funds were used as required despite reporting that 194 LEAs (19 percent of all LEAs) exercised MOE flexibility. Such a change could have allowed the SEA to more effectively monitor how LEAs used freed-up funds. Like Illinois, Ohio also did not require LEAs in the State to track how they used the freed-up funds. The Ohio LEAs included in our review were unable to provide support showing that freed-up funds were spent appropriately.



At the time of our audit, Texas lacked information on whether LEAs in the State had reduced local special education expenditures using MOE flexibility. Texas' information system did not identify why LEAs reduced local special education spending. Therefore, Texas could not differentiate between those LEAs that had exercised MOE flexibility as a result of receiving supplemental IDEA funds under the Recovery Act and those that reduced local special education spending using the exceptions provided in IDEA § 613(a)(2)(B).

At the time of our audit, Texas was analyzing each LEA's MOE data for local spending reductions that occurred in FY 2009–2010. Texas initially flagged all LEAs that reduced local spending as a potential compliance matter and was contacting each of these LEAs to identify the reason for their spending reductions and determining whether the reductions were proper. When these assessments are completed, Texas should be able to provide information on those LEAs that reduced local special education spending using MOE flexibility after receiving Recovery Act funds.

### **SEA Use of Freed-Up Funds**

Based on the information that Maine officials provided during the audit, Maine exercised MOE flexibility at the State level to provide State fiscal relief in FY 2009–2010 and FY 2010–2011 and thus did not use the funds according to Federal requirements. According to IDEA § 613(j)(3), SEAs that use MOE flexibility to reduce State special education spending must use an equal amount of funds from State sources to support activities authorized under the ESEA or to support need-based student or teacher higher education programs. Maine officials initially told us that the State used MOE flexibility for fiscal relief because the State faced a critical financial situation. Maine did not provide any support that it spent any of the funds resulting from exercising State-level MOE flexibility on the required activities. Later in the audit, Maine officials told us that the reduction taken in FY 2009–2010 was subsequently reinstated with other State funds but did not provide requested supporting documentation.<sup>7</sup>

When Maine exercised MOE flexibility at the State level, it also did not report required information to the Department. According to IDEA § 613(j)(4), an SEA must report to the Department the amount of expenditures reduced and the activities that were funded as a result for any year that it exercises MOE flexibility. As a result, OSEP was not aware of Maine's actions and could not evaluate whether it used the MOE flexibility provision appropriately.

### **Amounts of Local Special Education Spending Reductions**

One California LEA that used MOE flexibility reduced local special education spending in FY 2009–2010 by more than the amount allowed. An eligible LEA can reduce local special education spending by up to 50 percent of the increase in IDEA funds that it receives from one year to the next. Belleview Elementary School District (Belleview) reduced local spending by

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<sup>7</sup> As discussed in Finding No. 1, information provided by Maine officials showed that special education programs and related services were a portion of Maine's overall spending reduction of \$14.4 million that was applied to GPA. However, we were not able to determine the exact amount of Maine's reduction to special education programs and related services, which is the amount that should have been spent on ESEA-related activities.

\$7,294 more than it should have. We identified the excessive local spending reduction during our review of revised data that California submitted to OSEP related to MOE flexibility reductions. Data submitted on Belleview did not match the MOE reduction amount shown in its records. When Belleview exercised MOE flexibility by more than the amount allowed in FY 2009–2010, it spent less local funds than required for its special education program and, thus, did not comply with the MOE requirement.

### **LEA Spending on Voluntary Coordinated Early Intervening Services**

In all four States where eligible LEAs exercised MOE flexibility, we found that States or LEAs did not properly administer the amounts that LEAs could use for voluntary CEIS in relation to their spending reductions under the MOE flexibility provision. According to data that SEAs reported to the Department for FY 2009, some LEAs in each of the four States reserved IDEA funds for voluntary CEIS in amounts that exceeded the maximum available. Furthermore, at least one LEA in each of these States spent amounts on voluntary CEIS that exceeded the amount available. When LEAs overspent on voluntary CEIS, the amount they spent on special education programs and services was less than required.

According to IDEA § 613(f)(1), an LEA may not use more than 15 percent of the amount it receives under IDEA in any fiscal year, less amounts that the LEA reduces local special education spending by using MOE flexibility, to develop and implement CEIS. Appendix D to 34 C.F.R. Part 300 states that LEAs that plan to reduce local special education spending using MOE flexibility, and that also plan to spend funds for CEIS must do so with caution because the two spending decisions are interrelated. An LEA’s decision on the amount of funds that it uses for one purpose affects the amount that it may use for the other purpose. Prior to the Recovery Act, LEAs typically did not receive an increase in IDEA funding that was significant enough for them to exercise MOE flexibility. Because SEAs and LEAs did not have previous experience in administering MOE flexibility, some were not aware that these spending decisions were interrelated.

Appendix D to 34 C.F.R. Part 300 provides examples that illustrate how these spending decisions affect one another. The following example applies to the LEAs we discuss below.

*Example 2:* In this example, the maximum amount that is available for CEIS equals \$300,000 (15 percent of the LEA’s current year allocation), whereas the maximum allowed MOE flexibility reduction is \$500,000 (50 percent of the increased allocation).

Prior Year’s Allocation	\$1,000,000
Current Year’s Allocation	2,000,000
Increase in Allocation	1,000,000
Maximum Available for MOE Reduction	500,000
Maximum Available for CEIS	300,000

Using different scenarios for a hypothetical LEA, Table 5 illustrates the relationship between the amount available for voluntary CEIS and the amount of local special education spending reductions using MOE flexibility.

**Table 5: Hypothetical Example of the Relationship Between MOE Flexibility Reductions and Voluntary CEIS**

LEA's MOE Reduction Amount	Amount Available for Voluntary CEIS	Effect of Flexibility Reduction
\$0	\$300,000	LEA can devote maximum amount to CEIS
\$100,000	\$200,000	CEIS maximum reduced to \$200,000 because of \$100,000 MOE reduction
\$300,000	\$0	LEA cannot use any funds for CEIS because MOE reduction equals CEIS maximum
\$500,000	\$0	LEA cannot use any funds for CEIS because MOE reduction exceeds CEIS maximum

Revised MOE flexibility reduction data that California submitted to the Department in December 2011 showed that one LEA, Lompoc Unified School District (Lompoc), reserved funds for voluntary CEIS in an amount that exceeded the maximum available by \$229,064. California officials advised us that it appeared that Lompoc spent this amount for voluntary CEIS. As a result, Lompoc inappropriately spent \$229,064 of Federal funds on voluntary CEIS when the funds should have been used for special education and related services.

Illinois reported only estimated amounts for those LEAs that reserved funds for voluntary CEIS in their FY 2009–2010 budget applications. Statewide, we determined that Illinois reported that 53 LEAs reserved voluntary CEIS in amounts that exceeded the maximum available. If these 53 LEAs spent this amount of IDEA funds for voluntary CEIS the LEAs would have exceeded the maximum available by more than \$2.1 million. Because Illinois did not require LEAs to differentiate between CEIS expenditures and regular special education expenditures, Illinois may not be able to identify which LEAs spent excessive funds for voluntary CEIS.

One Illinois LEA in our review, Community Unit School District 300, did not separately track its voluntary CEIS expenditures and could not determine the actual amount spent on CEIS. The other Illinois LEA in our review, Indian Prairie, provided records showing that it spent \$365,944 for voluntary CEIS. However, because Indian Prairie reduced local special education spending by the maximum allowed using MOE flexibility, it should not have spent any funds on voluntary CEIS. As a result, all of Indian Prairie's voluntary CEIS expenditures were not allowable and improperly reduced the amount spent on its regular special education program. Indian Prairie's inappropriate use of special education program funds for voluntary CEIS may have been caused by a lack of guidance—we determined that Illinois did not notify LEAs about the relationship between these two spending decisions.

For FY 2010–2011, Illinois enhanced its budget applications by adding a separate page that allows LEAs to identify proposed CEIS expenditures and that pre-populates each LEA's 15 percent maximum allowance for voluntary CEIS. However, the State did not implement a control in the budget application to ensure that LEAs adjust the proposed CEIS amount to reflect the amount budgeted for MOE flexibility reductions.

Based on information Ohio reported to the Department, we determined that 32 LEAs had reserved voluntary CEIS in amounts that exceeded the maximum amount available in FY 2009–2010. As a result of our audit, Ohio collected voluntary CEIS expenditure information from these 32 LEAs and determined that 7 had spent a total of \$178,232 more for voluntary CEIS than they should have, as shown in Table 6 below. These funds should have been used for special education and related services.

**Table 6: Ohio LEAs That Spent Excessive Voluntary CEIS**

LEA Name (a)	Excessive Amount Spent
Findlay City School District	\$ 22,563
Madison Local Schools	18,126
McDonald Local School District	4,622
Minerva Local Schools	16,207
North Royalton City School District	75,000
Reynoldsburg City Schools	39,276
Riverside Local School District	2,438
<b>Total</b>	<b>\$178,232</b>
(a) Ohio obtained the excessive amounts spent for voluntary CEIS from LEAs. We did not audit the amounts in this table.	

Ohio LEAs may not have fully understood how voluntary CEIS and MOE flexibility reductions are interrelated. When the LEAs submitted their applications to Ohio, they indicated that they would use the maximum voluntary CEIS amount available and also exercise MOE flexibility. However, they did not reduce the voluntary CEIS amount as required. By the time Ohio created formulas in its Web-based grant system to check the validity of voluntary CEIS and MOE flexibility reduction amounts proposed by LEAs, many of the LEA applications had already been approved. Ohio’s system did not identify the discrepancies for those LEAs.

Ohio officials told us that they have now provided LEAs with written guidance on the use of voluntary CEIS within the Web-based grant system. The document is available to all users and is updated annually. Ohio officials also stated that the grant system now verifies that LEAs have not overallocated voluntary CEIS. They also plan to provide more technical assistance to LEAs about the relationship between voluntary CEIS and MOE flexibility reductions.

Based on information Texas reported to the Department, we determined that seven LEAs reserved IDEA funds for voluntary CEIS in amounts that exceeded the maximum amount available. During our review, Texas obtained voluntary CEIS information from these LEAs and determined that two LEAs spent a total of \$6,950 more than they should have. Specifically, Hamlin Independent School District and Westbrook Independent School District spent excessive amounts for voluntary CEIS of \$2,850 and \$4,100, respectively. These funds should have been used for special education and related services. At the time of our review, Texas did not have a proper understanding of the relationship between voluntary CEIS expenditures and MOE flexibility reductions.

## RECOMMENDATIONS

We recommend that the Acting Assistant Secretary of the Office of Special Education and Rehabilitative Services—

- 2.1 Verify that Illinois and Ohio have policies and procedures in place to ensure that LEAs exercising MOE flexibility in the future separately account for their use of freed-up funds.
- 2.2 Require the four States where we identified monitoring deficiencies related to LEAs exercising MOE flexibility or using freed-up funds (California, Illinois, Ohio, and Texas) to provide evidence that they have implemented appropriate monitoring controls in the event that LEAs exercise MOE flexibility in the future.
- 2.3 If it is confirmed that Maine inappropriately reduced spending using MOE flexibility, determine whether the improper spending reductions have been fully restored. If the funding was fully restored, verify that the SEA ensured that those funds were used by the LEAs for special education programs and related services during the appropriate fiscal year.
- 2.4 Determine the amount that California is required to remit to the Department when Belleview improperly reduced local special education expenditures by \$7,294 in FY 2009–2010 using MOE flexibility. In addition, require California to determine whether any other LEAs improperly reduced local spending using MOE flexibility after receiving Recovery Act IDEA funds and determine whether a fiscal recovery is warranted. For all such instances, California should ensure that the LEAs revise the FY 2009–2010 MOE baseline to reflect the amount that they should have spent on special education programs absent the improper spending reductions. These LEAs should then be required to recalculate MOE requirements for subsequent years, using the revised FY 2009–2010 MOE amount as the baseline spending level that should have been met or exceeded in FY 2010–2011.
- 2.5 Require Illinois, Ohio, and Texas to provide guidance to LEAs to ensure that the LEAs are aware of the relationship between amounts available for voluntary CEIS expenditures and local special education spending reduction amounts under MOE flexibility.
- 2.6 Require California, Illinois, Ohio, and Texas to identify any additional LEAs that spent IDEA funds for voluntary CEIS in amounts that exceeded the maximum amount available in FY 2009–2010. Determine the amount that SEAs are required to remit to the Department as a result of additional LEAs spending IDEA funds for voluntary CEIS inappropriately.
- 2.7 Determine the amount that SEAs are required to remit to the Department in the 4 States where 11 LEAs spent IDEA funds for voluntary CEIS in an amount that exceeded the maximum amount available by a total of \$780,190:
  - (a) Lompoc overspent voluntary CEIS by \$229,064;

- (b) Indian Prairie overspent voluntary CEIS by \$365,944;
- (c) Seven Ohio LEAs overspent voluntary CEIS by a total of \$178,232; and
- (d) Two Texas LEAs overspent voluntary CEIS by a total of \$6,950.

### **OSERS Comments**

For Recommendations 2.1 and 2.2, OSERS indicated that it was initially concurring with the finding that Illinois and Ohio were unable to determine whether LEAs that exercised MOE flexibility used freed up funds appropriately and that four States had monitoring deficiencies related to LEAs using freed up funds. OSERS also initially concurred with Recommendations 2.1 and 2.2. However, OSERS stated that it reserved the right to revise its initial decision based on information provided by the States.

OSERS did not concur with the finding and corresponding Recommendation 2.3 regarding Maine's use of funds after inappropriately reducing State special education spending by exercising MOE flexibility for the same reasons stated in its comments on Recommendation 1.5.

For Recommendation 2.4, OSERS commented that OSEP needed further information on California's administrative structure for special education programs to determine whether it concurs with the finding regarding the California LEA that improperly exercised MOE flexibility and reduced local special education spending by \$7,294 in FY 2009–2010. Specifically, OSEP needed additional information to assess how the State determines whether the SELPA reduced the level of local, or State and local, expenditures for the education of children with disabilities by not more than 50 percent of the increase in its IDEA, Part B, Section 611 subgrant allocation.

OSERS stated that it concurred with the finding related to the amounts that LEAs could use for voluntary CEIS in relation to their spending reductions under the MOE flexibility provision and associated Recommendation 2.5 requiring Illinois, Ohio, and Texas to provide guidance to LEAs on the relationship between voluntary CEIS expenditures and local spending reductions under MOE flexibility. OSEP has documentation indicating that Ohio had already provided guidance to its LEAs. OSEP stated it will ensure that Illinois and Texas also provide guidance to their LEAs.

For Recommendations 2.6 and 2.7, OSERS stated that it initially concurred with the finding regarding the Illinois, Ohio, and Texas LEAs that spent IDEA funds for voluntary CEIS in amounts that exceeded the maximum amount available in FY 2009–2010. However, OSEP needed further information pursuant to California's administrative structure for special education programs to determine whether it concurred with the finding and corresponding Recommendations 2.6 and 2.7 regarding the California LEA. Specifically, OSEP needed additional information to assess how California determines whether the SELPA spent IDEA, Part B funds in an amount that exceeded the maximum amount available in relation to its spending reductions under the MOE flexibility provision.

## **OIG Response**

The OIG acknowledges OSERS' decision to initially concur with Recommendations 2.1 and 2.2 pending its receipt of additional information from State officials. During audit resolution, OSEP should request documentation from Illinois and Ohio demonstrating that they now have mechanisms to ensure that LEAs exercising MOE flexibility can separately account for the freed-up funds and that the four States named in the report have implemented monitoring procedures to ensure that LEAs use freed-up funds appropriately.

After considering OSERS' comments to Recommendation 2.3, the OIG maintains its position on the finding that Maine could not show that the funds resulting from its inappropriate reduction of State special education spending after exercising flexibility were used appropriately. We maintain our position for the reasons described in our response to OSERS' comments regarding Recommendation 1.5.

After considering OSERS' comments to Recommendation 2.4 in conjunction with information obtained during the audit, the OIG maintains its position that a California LEA improperly reduced local special education spending by more than the 50 percent allowed under IDEA. At the time of the audit, California listed this district as an LEA that had received a Section 611 subgrant from the State in FY 2009–2010. Further, as mentioned in our response to OSERS' comment to Recommendation 1.4, California annually assessed LEA performance and significant disproportionality at the district level and used the results to determine district eligibility for MOE flexibility. However, if OSEP confirms its understanding that the SELPAs rather than the districts are the subrecipients that may exercise MOE flexibility, then OSEP should verify that California is compliant in administering the related provisions of IDEA and the Department's implementing regulations at the SELPA level.

The OIG considered OSERS' comments to Recommendations 2.6 and 2.7 for California in conjunction with information obtained during the audit and maintains its position that the California LEA spent voluntary CEIS in an amount that exceeded the maximum amount available in relation to its spending reductions under the MOE flexibility provision. At the time of our audit, California listed Lompoc as an LEA that had received a Section 611 subgrant from the State in FY 2009–2010. Further, as mentioned above, California annually assessed LEA performance and significant disproportionality at the district level and used the results to determine district eligibility for MOE flexibility. However, if OSEP confirms its understanding that the SELPAs rather than the districts are the subrecipients that may exercise MOE flexibility, then OSEP should verify that California is compliant in administering the related provisions of IDEA and the Department's implementing regulations at the SELPA level.

## **OTHER MATTER – Reliability of MOE Data That States Reported to OSEP**

In the course of performing our audit, we determined that the data reported in Table 8, "Report on IDEA Part B Maintenance of Effort Reduction (34 CFR § 300.205(a)) and Coordinated Early Intervening Services (34 CFR § 300.226)" of OSEP's Data Accountability Center (DAC) were not reliable. Five of the six SEAs covered by our review reported inaccurate special education program data when they provided required information to the DAC for FY 2009. The reporting

errors occurred even though SEAs received specific reporting instructions for all DAC Table 8 data elements<sup>8</sup> that they were required to report. The reporting errors we identified included SEAs reporting (1) incorrect MOE reduction amounts, including instances where SEAs reported that LEAs exercised MOE flexibility when they had not; (2) incorrect amounts reserved for voluntary CEIS; and (3) inaccurate significant disproportionality data. Table 7 summarizes the identified data errors by State. We identified DAC Table 8 errors only for selected LEAs where we reviewed reported data—the data may contain additional errors for other LEAs that the SEAs reported on.

**Table 7: Summary of DAC Table 8 Data Errors by State for FY 2009**

State (a)	Errors in MOE Reduction Amounts (b)	Errors in Voluntary CEIS Amounts	Errors in Significant Disproportionality Determinations
California	Yes	No	No
Illinois	Yes	Yes	No
Louisiana	Yes	Yes	Yes
Ohio	Yes	No	No
Texas	Yes	No	No
(a) We did not review all data fields contained in Table 8 for accuracy. Our review was limited to specific data fields related to the scope of our audit. Thus, Table 8 data errors may exist beyond those identified in this report. (b) We identified instances in which California, Louisiana, Ohio, and Texas incorrectly reported that LEAs had reduced local special education spending using MOE flexibility when the LEAs had not.			

**Incorrect local spending reduction data.** Five SEAs in our review reported incorrect data regarding the amounts that LEAs reduced local special education spending by using MOE flexibility. In California, we reviewed MOE flexibility reduction data for 10 LEAs, including the 2 covered by our review, and determined that the reduction amounts were overstated for all 10 LEAs by a total of more than \$50 million. The reporting errors we identified in California do not appear to be an isolated problem. For the two LEAs in our review, California reported the maximum amount by which the LEAs could reduce local spending instead of the actual amount that spending was reduced.

Illinois and Ohio both reported planned amounts of LEA local spending reductions using MOE flexibility, instead of the actual reductions that LEAs made, even though the Table 8 instructions required that actuals be reported. Neither SEA collected actual local spending reduction amounts resulting from the flexibility provision. Illinois did not disclose to the Department that it reported budgeted MOE reduction amounts. In Ohio, we reviewed flexibility reduction data for 32 LEAs and determined that the SEA overreported the amount of reductions for 20 LEAs by more than \$1.3 million. Further, 6 of the 20 LEAs did not exercise MOE flexibility.

Louisiana reported that 25 LEAs exercised MOE flexibility; however, we determined that none had. Louisiana officials attributed the inaccurate reporting to an error that occurred when data were extracted from their information systems. We determined that the errors also occurred because the data were not reviewed before they were submitted to the DAC. Texas incorrectly

<sup>8</sup> Table 8 includes data for each LEA that receives an IDEA, Part B Section 611 or Part C, Section 619 subgrant, including LEA allocations, MOE reduction pursuant to Section 613(a)(2)(C), provision of CEIS, and the number of children receiving CEIS.



reported the total amount of each LEA's local spending reduction for all types of MOE reductions instead of reporting only each LEA's MOE flexibility reduction amount. The LEAs may have also reduced local special education spending under one or more of the exceptions provided under IDEA § 613(a)(2)(B).

**Incorrect voluntary CEIS data.** Two SEAs in our review reported incorrect data related to the amounts that LEAs had reserved for voluntary CEIS. Illinois reported its own estimates of the amounts that LEAs' reserved for voluntary CEIS rather than the amounts budgeted by the LEAs. Although Louisiana's eGMS system correctly included the total of both regular and Recovery Act IDEA funds reserved for voluntary CEIS, most of Louisiana's Table 8 reporting errors occurred because the reported data improperly excluded the amount of Recovery Act IDEA funds that the LEAs had budgeted for CEIS.

**Inaccurate significant disproportionality data.** Louisiana reported inaccurate significant disproportionality determinations for 26 LEAs when it submitted its Table 8 data. For 23 of the LEAs, Louisiana reported that the LEAs had significant disproportionality when they did not. Three other LEAs were reported as not having significant disproportionality when they did. Louisiana officials explained that an LEA's charter school affiliation could have caused some of the conflicting determinations. If one charter school in an association had significant disproportionality, Louisiana reported the entire association as having significant disproportionality. However, SEA officials could not explain the specific reason for discrepancies between Table 8 and Louisiana's data system for all cases.

The data deficiencies we identified could impair the Department's ability to inform the public and the Congress about the number of LEAs that actually exercised MOE flexibility, as well as the amounts of the local special education spending reductions that were made in a State or across the nation. It could also impact the availability of public data related to significant disproportionality and voluntary CEIS, compromising the ability of interested parties to obtain accurate data on those issues.

Based on the widespread errors we identified, OSEP should instruct all SEAs to verify the accuracy of the data reported in Table 8 for all LEAs in the State and resubmit corrected data as necessary. In addition, OSEP should require that SEAs provide "data notes" to explain any data issues or anomalies that may affect the accuracy or reliability of the data reported to the DAC. Until OSEP is assured that all material data deficiencies have been corrected in the DAC, it should place a disclaimer on its public Web site acknowledging the weaknesses in the data reported by SEAs.

OSERS commented that OSEP has already instructed all SEAs to verify the accuracy of the data reported in Table 8 and required SEAs to provide data notes to explain any data issues or anomalies. Further, OSEP has implemented processes and added features to improve data accuracy. OSERS also commented that the DAC has ended and that continuing data verification activities have been transferred to OSEP staff.

Although the OIG is aware that the Department provided instructions to all SEAs when the Table 8 requirements were first introduced, the OIG suggests that the Department remind all SEAs of the Table 8 instructions and requirements. Specifically, OSEP should instruct each SEA to

reassess the accuracy of the data it reported in Table 8 for all LEAs in the State and resubmit corrected data as necessary. Further, if an SEA or OSEP identifies data issues or anomalies that may affect the accuracy or reliability of the data, OSEP should require the SEA to provide data notes.

## OBJECTIVES, SCOPE, AND METHODOLOGY

This report provides information about how selected SEAs and LEAs administered certain provisions of IDEA and the Department's implementing regulations in response to increased funding provided under the Recovery Act. The objectives of the audit were to determine whether LEAs that were provided increased IDEA funding under the Recovery Act and exercised MOE flexibility with non-Federal funds (1) were eligible to do so in accordance with applicable laws, regulations, and guidance; (2) used and accounted for the freed-up funds in accordance with applicable laws, regulations, and guidance; and (3) experienced adverse impacts as a result of reducing special education MOE. Because of the role that SEAs play in determining LEA eligibility for MOE flexibility and ensuring that LEAs use freed-up funds properly, we also reviewed how the six SEAs carried out their LEA oversight responsibilities.

We conducted the audit at SEAs in California, Illinois, Louisiana, Maine, Ohio, and Texas and selected LEAs in each of the six States. The six SEAs were allocated about \$6.7 billion of the total \$22.8 billion of regular IDEA and Recovery Act IDEA funds awarded in Federal FY 2009. The SEAs and LEAs covered by the review are listed in Table 8 below.

**Table 8: Summary Information on SEAs and LEAs Reviewed**

State/SEA Location	FY 2009 Total IDEA State Award (thousands)	LEAs Reviewed	LEA Location
California	\$2,446,375	San Juan Unified School District	Carmichael, CA
		Long Beach Unified School District	Long Beach, CA
Illinois	\$1,009,858	Community Unit School District 300	Carpentersville, IL
		Indian Prairie School District 204	Aurora, IL
Louisiana	\$376,910	Iberia Parish School System	New Iberia, LA
		Vermillion Parish School System	Abbeville, LA
		St. Martin Parish School District	St. Martinville, LA
		Allen Parish School District	Oberlin, LA
		Recovery School District - Pride College Preparatory Academy	New Orleans, LA
		East Feliciana Parish School System	Clinton, LA
		Recovery School District - KIPP New Orleans Schools	New Orleans, LA
Maine	\$107,553	Scarborough School Department	Scarborough, ME
		Brunswick School Department	Brunswick, ME
Ohio	\$872,792	Columbus City Schools	Columbus, OH
		Reynoldsburg City Schools	Reynoldsburg, OH
Texas	\$1,922,188	Houston Independent School District	Houston, TX
		Brownwood Independent School District	Brownwood, TX
<b>Total</b>	<b>\$6,735,676</b>		

The grant programs, program names, and Catalog of Federal Domestic Assistance (CFDA) numbers assigned for grant-tracking purposes are identified below.

- IDEA, Part B, Section 611, Special Education Grants to States program (CFDA 84.027); and
- Recovery Act IDEA, Part B, Section 611, Special Education Grants to States program (CFDA 84.391).

At the State level, we focused our audit on each SEA’s determination process and related policies and procedures for LEA oversight. At the LEAs, we reviewed determination information that the LEAs had to support their eligibility for MOE flexibility, the use of and accounting for freed-up funds, and impacts related to the reduction of local special education expenditures. Since SEAs had discretion in timing the LEA determinations relative to the LEAs exercising MOE flexibility, the audit periods for objective 1 ranged from FY 2006–2007 through FY 2009–2010. LEAs in the selected States exercised MOE flexibility in FY 2009–2010. Lastly, we reviewed impacts that LEAs may have experienced from February 2009 through September 2012 after exercising MOE flexibility.

To accomplish our objectives, we performed the following procedures:

1. Obtained background information and funding data for the six SEAs and selected LEAs.
2. Reviewed and considered the results and findings of prior SEA and LEA audits and, where available, other State and local reviews and Department program monitoring reviews for background information. We also reviewed prior audit reports issued by our office and considered GAO reports to identify issues related to our audit objectives. According to a 2011 report, GAO conducted a nationally representative survey of LEAs and identified those that reduced their local special education expenditures because of the MOE flexibility provision and the large influx of Recovery Act funds. However, GAO did not disclose the identity of survey participants and we could not correlate GAO's survey results to LEAs in the States we reviewed.
3. Reviewed relevant Federal laws, regulations, and guidance issued by the Department to gain an understanding of the requirements applicable to the audit objectives.
4. Performed specific work to achieve each audit objective:
  - a. Objective 1—Interviewed SEA and LEA program and fiscal officials responsible for administering and overseeing the regular and Recovery Act IDEA grants. We reviewed and analyzed SEA and LEA documentation, including determination file information, to assess eligibility for MOE flexibility and to corroborate testimonial evidence.
  - b. Objective 2—Interviewed SEA and LEA program and fiscal officials responsible for administering and overseeing the regular and Recovery Act IDEA grants. We also reviewed and analyzed SEA and LEA documentation, including financial reports, financial transaction records, special education MOE reports, grant awards, and allocation and receipt records to assess use of and accounting for freed-up funds and to corroborate testimonial evidence.
  - c. Objective 3—Interviewed SEA and LEA program and fiscal officials responsible for administering and overseeing the regular and Recovery Act IDEA grants in the four States in which LEAs exercised MOE flexibility. In addition, we reviewed and analyzed SEA and LEA documentation, including correspondence and special education MOE reports, to address impacts and corroborate testimonial evidence.
  - d. We also obtained information from the IDEA Money Watch Web site, the Department's Office of Civil Rights' four regional offices, and OSEP to further identify whether there may have been adverse impacts to special education programs and related services based on LEAs reducing local special education expenditures using MOE flexibility.

## SEA and LEA Selection Methodology

The 50 States, Puerto Rico, and District of Columbia comprised the universe of potential State-level entities to be selected. The national team judgmentally selected six SEAs by using a non-statistical risk-based approach based on factors that were pertinent to our audit objectives. These risk factors included, but were not limited to the following: (1) the amount of regular and Recovery Act IDEA funds each SEA was awarded in FY 2009; (2) our analysis of the Table 8 data that each SEA submitted to the DAC; (3) findings from prior audits, including audits performed by our office and GAO reviews, as well as OSEP program monitoring visits; and (4) the extent of Recovery Act audit coverage by our office and GAO. Because we used non-statistical sampling procedures to select SEAs and LEAs, the results will not necessarily be representative of all States and LEAs and cannot be projected.

Regional audit teams assigned to each of the six States and corresponding SEAs judgmentally selected 2 LEAs to audit<sup>9</sup> by considering various risk factors related to eligibility for MOE flexibility including: (1) LEAs that reduced local special education spending by the highest amount after receiving Recovery Act IDEA funds, (2) LEAs identified as higher risk during application of SEA-level audit procedures, (3) our analysis of DAC Table 8 data, (4) geographic location of LEAs, (5) LEAs that were in existence and remained in the same organizational form over the entire audit period, and (6) LEAs that had risk factors identified during previous Recovery Act related audits performed by our office. We limited the LEA selection to two LEAs in each State based on available resources and time frames available for performing the work. Table 3 in Finding No. 1 of this report lists the total number of LEAs in each of the six States that had determinations and the number of these LEAs that were eligible to exercise MOE flexibility.

## Data Reliability

To determine whether LEAs that exercised MOE flexibility after receiving Recovery Act IDEA funds were eligible, we relied on computer-processed data contained in the SEA and LEA data systems. We performed limited assessments of the reliability of computer-processed data used in LEA determinations by (1) gaining an understanding of controls over computer-processed information used in the determinations, (2) reconciling and testing data to supporting documents including LEA determination notification letters, (3) recalculating information and checking formulas in the determination data, (4) viewing the most recent financial and audit reports for internal control-related findings that might negatively impact data reliability, and (5) interviewing officials about the determination data. As described in Finding No. 1, we identified data reliability issues with LEA determination data for one indicator in one State. Based on our limited assessments and notwithstanding the isolated data reliability issues described in Finding No. 1, we determined that the computer-processed data used to perform our audit procedures were sufficiently reliable for the purposes of this audit.

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<sup>9</sup> Regional teams selected two LEAs in each State except Louisiana. After selecting Louisiana and beginning work at the SEA, we learned that none of the Louisiana LEAs exercised MOE flexibility. Thus, the regional team assigned to audit Louisiana selected seven LEAs to perform limited alternative audits steps that included: (1) corroborating the overall eligibility determination information obtained from the SEA in Louisiana; (2) determining whether eligible LEAs had been notified and offered the option to reduce MOE; and (3) determining why eligible LEAs elected not to exercise MOE flexibility.

To determine whether LEAs that exercised MOE flexibility used and accounted for the freed-up funds in accordance with applicable laws, regulations, and guidance, we relied on the SEA and LEA computer processed data contained in the SEA and LEA accounting and financial systems.<sup>10</sup> We performed limited assessments of the reliability of computer-processed data used to account for LEAs' local spending reductions and CEIS expenditures by (1) gaining an understanding of controls over computer-processed information used to account for the local spending reductions and CEIS expenditures, (2) comparing SEA-level allocation information to LEA-level receipt information to verify the accuracy and completeness of the data, (3) tracing data to supporting documents, (4) reviewing the LEA's most recent financial and audit reports for internal control-related findings that might negatively impact data reliability, and (5) interviewing SEA and LEA officials about the local spending reduction and CEIS expenditure data. The data we used to perform our audit procedures were sufficiently reliable for our purposes.

We used DAC Table 8 data to select the SEAs and LEAs. The DAC Table 8 data were the only source available for nationwide information on LEAs use of the flexibility provision. During our fieldwork, we determined that these data were unreliable. The lack of reliable data for identifying LEAs that reduced local spending using MOE flexibility impacted the State and LEA selections we made for this audit. If we had correct LEA MOE flexibility data available to us, we might have selected different States or LEAs to audit.

We performed audit work at the selected LEAs and their corresponding SEA at the locations shown in Table 8 above and our offices from August 2011 through September 2012. We discussed the results of our audit with SEA officials in the six selected States. We also provided the SEA officials with written summaries of the findings identified during the audit. We discussed the results of our audit with Department officials on March 26, 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions contained in the report, based on our audit objectives.

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<sup>10</sup> LEAs in Maine and Louisiana and the two selected LEAs in Texas did not exercise the flexibility provision and, thus, did not have freed-up funds. Therefore, we did not rely on computer-processed data in regards to use of and accounting for freed-up funds in these locations.

**Attachment**



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES**

June 3, 2013

Patrick J. Howard  
Assistant Inspector General for Audit  
U.S. Department of Education  
Office of the Inspector General  
550 12<sup>th</sup> St. SW  
Washington, DC 20202

Dear Mr. Howard,

Thank you for providing the Office of Special Education and Rehabilitative Services (OSERS) the opportunity to review and comment on the Draft Audit Report: Local Educational Agency Maintenance of Effort Flexibility Due to Recovery Act IDEA, Part B Funds, Control Number ED-OIG/A09L0011, issued on April 15, 2013. We appreciate the Office of Inspector General's (OIG) willingness to extend the 30-day comment period to provide OSERS sufficient time to review and respond to the complex issues included in the draft report.

The Office of Special Education Programs reviewed the draft and attached is our response which includes Comments and Suggestions on the Background Section and responses to each of OIG's findings. In the first paragraph of our response, we raise an issue related to States that were subjects of this audit having the opportunity to respond to the draft audit report. As noted, we do not believe we have sufficient information to finalize our concurrence with eight of the draft findings and recommendations until we have an opportunity to review the States' responses.

We would be happy to work with the OIG to discuss the appropriate process for ensuring that States have an opportunity to fully respond to the draft findings and recommendations. We reserve the right to revise our comments based on information provided by the States.

Sincerely,

/s/ Michael K. Yudin

Michael K. Yudin  
Delegated the authority  
to perform the functions  
and duties of the Assistant  
Secretary for Special  
Education and  
Rehabilitative Services

Enclosure

cc: Raymond Hendren  
Regional Inspector General



**Office of Special Education and Rehabilitative Services (OSERS) Comments  
Draft Audit Report: Local Educational Agency Maintenance of Effort Flexibility Due to  
Recovery Act, Individuals with Disabilities Education Act (IDEA), Part B Funds  
Control Number ED-OIG/A09L0011**

**General Comments Regarding the Draft Findings and Recommendations:**

The Office of Special Education Programs' (OSEP's) comments on each of the findings and recommendations included in the OIG draft audit report on local educational agency (LEA) maintenance of effort (MOE) flexibility due to Recovery Act, IDEA Part B funds are noted below. It is our understanding that while State officials were provided with written summaries of the exceptions identified during the audit, they were not provided with a full opportunity to respond to the draft findings and recommendations. In an email sent on May 30, 2013, the Office of Inspector General (OIG) informed the Department's Office of the General Counsel (OGC) that the OIG provided point sheets to, and received written responses from, each State. We have not reviewed the States' written responses, further it is not clear whether States were given a full opportunity to respond to all of the draft findings and recommendations and if OIG considered States' responses in preparing the draft audit report sent to OSERS. Therefore, with the exception of the four draft findings for which the OSEP has independent confirmation through its own monitoring (1.1, 1.2, 1.5 and 2.3), our concurrence with the other eight draft findings and recommendations is preliminary, based on the information provided in the draft audit report. We do not have sufficient information to finalize our concurrence with the other eight draft findings and recommendations until we have an opportunity to review the States' responses. We would be happy to work with the OIG to discuss the appropriate process for ensuring that States have an opportunity to fully respond to the draft findings and recommendations. We reserve the right to revise our comments based on information provided by the States.

**Comments and Suggestions on Background Section:**

- Revise the first sentence in the bottom paragraph on page 2 of the report by referring to expenditures for "the education of children with disabilities" (not expenditures for "special education programs and related services") and the IDEA, Part B, section 611 subgrant allocation (not the Part B grant allocation), consistent with IDEA section 613(a)(2). The sentence should be revised to state: "The adjustment to the MOE requirement... permits an eligible local educational agency (LEA) to 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, Part B, section 611 subgrant allocation."
- Replace the term "free and appropriate public education" with the statutory term "free appropriate public education," consistent with IDEA section 602(9).
- Add to the LEA MOE flexibility section of the Background section on pages 2-3 of the report, a citation to IDEA section 616(f), which requires that if in making its annual determinations, an SEA determines that an LEA is not meeting the requirements of Part B, including meeting targets in the State's performance plan, the SEA *must* prohibit that LEA from reducing its MOE under IDEA section 613(a)(2)(C) for any fiscal year.

- Revise the description on pages 6 and 11 of the report to be consistent with the guidance provided in OSEP’s 2009 “Questions and Answers on Monitoring, Technical Assistance, and Enforcement” on the factors a State must consider in making LEA annual determinations. As noted in the guidance, a State must consider the following four 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. See Question C-9 in <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C4%2C>.

## **FINDING NO. 1 – Eligibility to Exercise MOE Flexibility**

- 1.1 Conduct additional program monitoring in Maine to ensure that annual LEA determinations are performed in accordance with applicable Federal requirements.

**OSERS Response:** The OIG found that Maine did not include all of the required factors when making fiscal year (FY) 2007-2008 LEA annual determinations. OSEP concurs with this finding and recommendation 1.1. OSEP notes that as part of the ARRA monitoring it conducted with States beginning in 2010, Maine submitted documentation demonstrating that the State used two of the four required factors when making LEA determinations based on 2008-2009 data. (See Attachment 1.) OSEP will conduct additional monitoring to ensure that, consistent with OSEP’s 2009 guidance, Maine makes annual LEA determinations using, at a minimum, the four required factors.

- 1.2 Verify that Ohio includes the required elements shown in its policies and procedures when it conducts annual LEA determinations.

**OSERS Response:** The OIG found that Ohio did not include all of the required factors when making LEA annual determinations. OSEP concurs with this finding, which is consistent with a finding OSEP made during its October 2009 monitoring visit to Ohio, and recommendation 1.2. As noted in the report, during a monitoring visit in October 2009, OSEP found that Ohio did not include all of the required factors when making LEA determinations for the 2007-2008 school year. As part of the required corrective action, the State submitted revised procedures for making LEA annual determinations that included the four required factors. OSEP verified the State’s correction of the noncompliance in November 2010. In 2012, Ohio implemented procedures for LEA determinations that include the required factors when it conducts its annual LEA determinations. Please see: <http://education.ohio.gov/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=968&ContentID=89529&Content=128131>. OSEP considers this finding to be resolved.

- 1.3 Verify that California has implemented appropriate controls over data calculations used in indicator determinations.

**OSERS Response:** The OIG found that California incorrectly calculated LEAs’ compliance with Indicator 11, which measures the percent of children who were evaluated in a timely manner, when making LEA FY 2007-2008 annual determinations. OSEP’s initial comment

is that it concurs with this finding and recommendation 1.3. However, as noted above, we reserve the right to revise our comments based on information provided by the States.

- 1.4 Require the five California LEAs to revise their FY 2009–2010 MOE baseline to reflect the amount that they should have spent on special education programs absent the improper spending reductions. These LEAs should also be required to recalculate MOE requirements for subsequent years, using the revised FY 2009–2010 MOE amount as the baseline spending level that should have been met or exceeded in FY 2010–2011. Lastly, determine the amount that California is required to remit to the Department as a result of the five ineligible LEAs improperly reducing local special education spending.

**OSERS Response:** The OIG has not provided sufficient information for OSEP to provide an initial comment regarding whether it concurs with this finding and recommendation. OSEP agrees that LEAs that incorrectly received a determination of “meets requirements” should be prohibited from exercising MOE flexibility. However, OSEP believes that additional information regarding California’s administrative structure is necessary to determine the accuracy of the finding and whether recovery of funds is appropriate. The OIG notes in footnote 4 on page 7 of the report that in California, Special Education Local Plan Areas (SELPA) are responsible for collaborating with county agencies and school districts to facilitate education programs and services for students with special needs and each of these administrative units may have one or more LEAs within its geographic boundaries. It is OSEP’s understanding, based on information provided by the State in prior monitoring visits and section 56205(a) of the California Education Code, that each SELPA submits a plan that provides assurances to the State that it will meet each of the requirements in IDEA section 613(a), including maintenance of financial effort requirements. The State makes IDEA, Part B, section 611 subgrants under 34 CFR §300.705 to eligible SELPAs. SELPAs then distribute Part B funds to school districts that are part of the SELPA. Consistent with 34 CFR §76.50 and the definitions of “subgrant” and “subgrantee” in 34 CFR §80.3, the Part B funds SELPAs provide to school districts are not considered subgrants under Part B of the IDEA. OSEP notes that California reported information on SELPAs, districts, and individual elementary and secondary schools when providing OSEP their 2009-2010 Table 8 data on LEA MOE reductions and coordinated early intervening services (CEIS).

The OIG finding is based on 5 school districts that received Part B funds from the SELPA, but it is the SELPA that receives the subgrant from the State. Under IDEA section 613(a)(2)(C), an LEA may exercise MOE flexibility for any fiscal year for which the allocation received by the LEA under 34 CFR §300.705 exceeds the amount the LEA received for the previous fiscal year. A SELPA meets the definition of an educational service agency (ESA) in IDEA section 602(5), and ESAs are included in the definition of LEAs in IDEA section 602(19). It is the SELPA, not the school district that receives the subgrant under 34 CFR §300.705. Therefore, before OSEP can provide an initial comment regarding whether it concurs with the finding and recommendation, it needs additional information in order to assess how the State determines whether the SELPA, which is the entity that receives the subgrant under 34 CFR §300.705, is eligible to exercise MOE flexibility.

- 1.5 Determine whether Maine inappropriately reduced the amount spent for special education

and related services by exercising MOE flexibility. If Maine did inappropriately exercise MOE flexibility at the State level, determine the actual fiscal impact of this action and implement appropriate corrective actions, including requiring the SEA to restore special education funding reductions.

**OSERS Response:** OSEP does not concur with the finding that Maine inappropriately reduced State special education spending by exercising MOE flexibility at the State level or recommendation 1.5. As a result of this audit, the OIG, OSEP, and Maine have had several conversations regarding the issue raised in this finding prior to the issuance of this report. As noted in the report, Maine provided inconsistent information during these conversations. Initially, the State indicated that the maintenance of State financial support (MFS) reduction was taken under IDEA section 613(j) and then Maine submitted additional information regarding the State budget enactment and additional reductions. Ultimately, the State provided documentation indicating that it used State Fiscal Stabilization Funds (SFSF or Stabilization) for the purposes of meeting the MFS requirement in IDEA section 612(a)(18) and that it did not take the MFS reduction under IDEA section 613(j). In an email to the State dated March 29, 2013, OSEP stated, “We have reviewed all of the documentation that the State submitted, including, but not limited to, the documents submitted on February 12, 13, 15, 25, and 27, 2013, and conclude that Maine: (1) properly treated Stabilization funds as State funds for the purpose of meeting the MFS requirement under Part B of the IDEA for 2008-2009; (2) met the MFS requirement for 2008-2009; and (3) did not exercise the flexibility in 34 CFR §300.230.” Further, in the same email, OSEP recommended “that Maine continue to obtain technical assistance from OSEP to ensure that the State fully understands the requirement to maintain State financial support and has systems in place to ensure compliance.”

The report notes on page 14 that the OIG performed a limited review of the data in a summary report Maine provided to the Department, which included comparing the special education and related services data in the summary report to data in a similar report obtained during the audit. The OIG identified differences between the two reports in the number of funding sources, General Purpose Aid (GPA) allocation amounts, and student counts. It is not clear what document the OIG is referring to as “the summary report” and OSEP does not have the “similar report obtained during the audit” that the OIG references on page 14. If the OIG has specific information that demonstrates that the information that Maine provided to the Department is inaccurate, OSEP requests the OIG provide OSEP that information.

## **FINDING NO. 2 – Use of and Accounting for Freed-Up Funds**

2.1 Verify that Illinois and Ohio have policies and procedures in place to ensure that LEAs exercising MOE flexibility in the future separately account for their use of freed-up funds.

**OSERS Response:** The OIG found that Illinois and Ohio were unable to determine if LEAs that exercised MOE flexibility used the “freed up” funds to carry out activities that could be supported with funds under the Elementary and Secondary Education Act (ESEA). OSEP’s initial comment is that it concurs with this finding and recommendation 2.1. However, as noted above, we reserve the right to revise our comments based on information provided by

the States.

- 2.2 Require the four States where we identified monitoring deficiencies related to LEAs exercising MOE flexibility or using freed-up funds (California, Illinois, Ohio, and Texas) to provide evidence that they have implemented appropriate monitoring controls in the event that LEAs exercise MOE flexibility in the future.

**OSERS Response:** The OIG found that four States did not properly monitor LEAs that exercised MOE flexibility to ensure they were using “freed up” funds properly. OSEP’s initial comment is that it concurs with this finding and recommendation 2.2. However, as noted above, we reserve the right to revise our comments based on information provided by the States.

- 2.3 If it is confirmed that Maine inappropriately reduced spending using MOE flexibility, determine whether the improper spending reductions have been fully restored. If the funding was fully restored, verify that the SEA ensured that those funds were used by the LEAs for special education programs and related services during the appropriate fiscal year.

**OSERS Response:** OSEP does not concur with this finding or recommendation. See response to recommendation 1.5.

- 2.4 Determine the amount that California is required to remit to the Department when Belleview improperly reduced local special education expenditures by \$7,294 in FY 2009–2010 using MOE flexibility. In addition, require California to determine if any other LEAs improperly reduced local spending using MOE flexibility after receiving Recovery Act IDEA funds and determine if a fiscal recovery is warranted. For all such instances, California should ensure that the LEAs revise the FY 2009–2010 MOE baseline to reflect the amount that they should have spent on special education programs absent the improper spending reductions. These LEAs should then be required to recalculate MOE requirements for subsequent years, using the revised FY 2009–2010 MOE amount as the baseline spending level that should have been met or exceeded in FY 2010–2011.

**OSERS Response:** The OIG has not provided sufficient information for OSEP to provide an initial comment regarding whether it concurs with this finding and recommendation. OSEP agrees that LEAs that are eligible to exercise MOE flexibility may reduce the level of local, or state and local, expenditures for the education of children with disabilities by not more than 50 percent of the increase in their IDEA, Part B, section 611 subgrant allocation. However, OSEP believes that additional information regarding California’s administrative structure is necessary to determine the accuracy of the finding and whether recovery of funds is appropriate. The information in the audit is based on Belleview Elementary School District, which is a school district, not a SELPA. Therefore, before OSEP can provide an initial comment regarding whether it concurs with the finding and recommendation, it needs additional information in order to assess how the State determines whether the SELPA reduced the level of local, or state and local, expenditures for the education of children with disabilities by not more than 50 percent of the increase in its IDEA, Part B, section 611 subgrant allocation. See response to recommendation 1.4.

2.5 Require Illinois, Ohio, and Texas to provide guidance to LEAs to ensure that the LEAs are aware of the relationship between amounts available for voluntary CEIS expenditures and local special education spending reduction amounts under MOE flexibility.

**OSERS Response:** The OIG found that three States did not provide guidance on the amounts LEAs could use for voluntary CEIS in relation to their spending reduction under the MOE flexibility provision. OSEP's concurs with this finding and recommendation. OSEP has documentation indicating that Ohio has already provided guidance to its LEAs (see page 9, <https://ccip.ode.state.oh.us/DocumentLibrary/ViewDocument.aspx?DocumentKey=1037>) as recommended, and Texas has informed OSEP that it is developing similar guidance. OSEP will conduct additional monitoring to ensure that Illinois and Texas provide guidance to LEAs regarding the interaction between voluntary CEIS expenditures and the LEA MOE flexibility provision.

2.6 Require California, Illinois, Ohio, and Texas to identify any additional LEAs that spent IDEA funds for voluntary CEIS in amounts that exceeded the maximum amount available in FY 2009–2010. Determine the amount that SEAs are required to remit to the Department as a result of additional LEAs spending IDEA funds for voluntary CEIS inappropriately.

**OSERS Response:** The OIG recommended that OSEP require California, Illinois, Ohio, and Texas to identify any LEAs, in addition to those identified in recommendation 2.7 below, that spent IDEA funds for voluntary CEIS in an amount that exceeded the maximum amount available in relation to their spending reductions under the MOE flexibility provision. OSEP's initial comment is that it concurs with recommendation 2.6 regarding Illinois, Ohio, and Texas. OSEP believes that additional information regarding California's administrative structure is necessary to determine what action California should take and whether recovery of funds is appropriate. Therefore, before OSEP can provide an initial comment regarding whether it concurs with the recommendation, it needs additional information in order to assess how the State determines whether SELPAs spent IDEA Part B funds for voluntary CEIS in an amount that exceeded the maximum amount available in relation to their spending reductions under the MOE flexibility provision.

2.7 Determine the amount that SEAs are required to remit to the Department in the 4 States where 11 LEAs spent IDEA funds for voluntary CEIS in an amount that exceeded the maximum amount available by a total of \$780,190:

- (a) One school district in California, Lompoc Unified School District overspent voluntary CEIS by \$229,064;
- (b) One LEA in Illinois, Indian Prairie, overspent voluntary CEIS by \$365,944;
- (c) Seven Ohio LEAs overspent voluntary CEIS by a total of \$178,232; and
- (d) Two Texas LEAs overspent voluntary CEIS by a total of \$6,950.

**OSERS Response:** The OIG found that that LEAs in four States spent IDEA Part B funds

for voluntary CEIS in an amount that exceeded the maximum amount available in relation to their spending reductions under the MOE flexibility provision. OSEP's initial comment is that it concurs with this finding regarding LEAs in Illinois, Ohio, and Texas and recommendation 2.7. However, OSEP cannot provide an initial comment regarding whether it concurs with the finding and recommendation regarding the Lompoc Unified School District in California, which is a school district, and not a SELPA. OSEP believes that additional information regarding California's administrative structure is necessary to determine the accuracy of the finding and whether recovery of funds is appropriate. See responses to recommendation 1.4 and 2.6.

### **OTHER MATTER – Reliability of MOE Data That States Reported to OSEP**

Based on the widespread errors we identified, OSEP should instruct all SEAs to verify the accuracy of the data reported in Table 8 for all LEAs in the State and resubmit corrected data as necessary. In addition, OSEP should require that SEAs provide "data notes" to explain any data issues or anomalies that may affect the accuracy or reliability of the data reported to the DAC [Data Accountability Center]. Until OSEP is assured that all material data deficiencies have been corrected in the DAC, it should place a disclaimer on its public Web site acknowledging the weaknesses in the data reported by SEAs.

**OSERS Response:** OSEP has already instructed all SEAs to verify the accuracy of the data reported in Table 8 and required SEAs to provide data notes to explain any data issues or anomalies. In addition, OSEP has established and implemented a process that examines potential issues of noncompliance reflected in States' Table 8 data. As part of these procedures, OSEP reviewed the Federal fiscal year (FFY) 2009-2010 Table 8 data, contacted States regarding data issues or anomalies, required States to provide updated data and/or explanations in data notes, and will take action accordingly. For the FFY 2010-2011 Table 8 data submission, new features were added to improve the accuracy of the data. These features included enhanced edit checks and the ability to review and revise FFY 2009 data.

The Data Accountability Center (DAC) has ended. Data verification responsibilities, previously assigned to DAC, have been assumed by OSEP staff.