

**Response to Comments on 1820-NEW**  
(Emergency Clearance)

Comment: *Over 70 commenters expressed support for the need to add new information to the annual IDEA data required by U.S. Dept. of Education's Office of Special Education Programs (OSEP). The commenters agreed that the additional IDEA Part B funds made available to LEAs via the ARRA requires this additional data collection in order for USDE to execute its fiduciary responsibilities to prevent fraud, waste and abuse and to provide information to the Congress and the public. Commenters further requested that these additional data to be made available to the public as quickly as possible.*

Response: OSEP agrees that this information collection is necessary to prevent the fraud, waste and abuse of IDEA funding as well as provide information to Congress and the public on how districts have used the CEIS and MOE provisions of IDEA. We will work to validate the submitted data make them available to the public as quickly as possible.

Comment: *Four commenters stated that they are concerned about meeting the reporting deadlines in the proposed collection and requested that the start date for the collection be delayed until SY 2010-11. They noted that it takes time to put a new data collection in place at the state and local levels. In some states, it is not automatic that their IT departments can re-tool their systems immediately. In some states, re-tooling requests may take up to 6-9 months or even longer to complete and state special education agencies have no control over this.*

Response: OSEP does not agree with delaying the start date for this collection until SY 2010-11. Due to the enactment of ARRA, States have received an unprecedented amount of IDEA funding during FY 2009. The disbursement of \$11.7 billion in IDEA Part B ARRA funds to LEAs in addition to the regular FY 09 appropriation of \$11.8 billion during FY 2009 provides the LEAs with FY 2009 allocations that far exceed those of FY 2008; thereby making it advantageous for these LEAs to reduce their MOE under 34 CFR §300.205(a) and to reserve an amount under 34 CFR §300.226 to provide CEIS. Therefore, it is necessary to collect information on the implementation of 34 CFR §§300.205(a) and 300.226 during FY 2009 to prevent fraud, waste, and abuse as well as provide information to Congress and the public about the implementation of the MOE reduction and CEIS provisions in IDEA.

Comment: *Four commenters questioned whether another data collection that will take more than 1 million hours at a time when state and local education agencies are experiencing severe financial cutbacks resulting in personnel layoffs is the best use of limited personnel resources. The Administration has urged states and local districts to use ARRA funds to protect jobs and for innovation in education. These commenters do not believe that this data collection will help improve outcomes for children and therefore is not the best use of ARRA funds at the local level. Since states cannot keep ARRA IDEA funds at the state level, they do not have additional funds to undertake this data collection.*

Response: OSEP does not agree. Due to the unprecedented amount of IDEA funding being provided to states in FY 2009, it is necessary to collect information on the implementation of 34 CFR §§300.205(a) and 300.226 during FY 2009 to prevent fraud, waste, and abuse as well as provide information to Congress and the public about the implementation of the MOE reduction and CEIS provisions in IDEA. The FY 2009 funding increases make it advantageous for these LEAs to reduce their MOE under 34 CFR §300.205(a) and to reserve an amount under 34 CFR §300.226 to provide CEIS. In addition, the Department will soon publish an NPRM that proposes to allow States to reserve between \$100,000 and \$500,000 for ARRA data collection and reporting. Those funds could be used to support this collection.

Comment: *Four commenters questioned whether this needs to be a permanent annual collection when the influx of funding under the ARRA is a temporary anomaly at best. At the Senate Appropriations Subcommittee markup of the FY 10 Labor/HHS/Education appropriations bill this week, Senator Harkin indicated that IDEA was receiving a nominal increase precisely because of the ARRA funding for IDEA. The commenters noted that we are not likely to see large increases for IDEA in the next few years; hence the MOE will not surface as an issue and does not need to be annually tracked under IDEA.*

Response: OSEP believes that it is appropriate to collect this information for three years and will evaluate the information collection at the end of the three years. If it is determined at that time that the information collected is no longer useful, the collection will be discontinued.

Comment: *Four commenters noted that the federal government through OMB and the GAO has already put an extensive audit process in place for the ARRA funds. If the use of these funds needs closer scrutiny, then it should be done through the ARRA accounting process and not through an add-on to the IDEA 618 reporting process.*

Response: OSEP does not agree since there is no mechanism under the ARRA data collection and reporting to collect these data. The ARRA reporting and accountability process is very specific to the format and data fields included in FederalReporting.gov and required under section 1512(c). The Department explored with OMB the possibility of collecting additional elements through the ARRA reporting mechanism and OMB determined that USDE could not use the OMB system to collect the required additional data.

Comment: *Four commenters stated that this request fails to take into account the timelines that states and local school districts currently have in place for gathering the data that go into making determinations and the collection of data regarding CEIS. Thus, it fails to take into account any measures that states and local districts will have to put into place to revamp their systems and train personnel for a new data collection.*

Response: OSEP does not agree. OSEP is providing notification to states and LEAs 16 months prior to the submission of the data. States have informed OSEP that it takes 6-9 months to prepare for the submission of new data elements. OSEP believes 16 months is an ample period of time to prepare for this submission. In addition, States are currently required under 613(f)(4) to

collect data related to CEIS. Finally, the majority of the data related to the MOE reduction should be readily available in SEAs.

*Comment: Four commenters stated that the question as to whether LEAs may take advantage of the MOE clause in IDEA without receiving a determination of ‘meets requirements’ has been brought to the Secretary’s attention with a request for review and action. The Secretary has yet to address the concerns of the groups and state agencies that brought this issue to his attention. Commenters believe that there should be a resolution of this outstanding issue prior to putting any kind of data collection into effect because it could have an impact on the data collection. OSEP could very well find itself in a situation of having to revamp the requirements of this data collection.*

*Response: OSEP does not agree. Based on revised guidance published on April 13, 2009, 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. There is no indication that the Department is going to change its interpretation of these provisions.*

*Comment: One commenter noted that proposed Table 8, Section B reads that districts with a state-determined status as any other than “meets requirements” may not use the maintenance of effort (MOE) reduction allowed under the federal regulations. However, as noted, states determine the criteria for what will constitute “meeting requirements” relative to MOE reduction possibilities. This results in differing criteria with potentially inequitable application across states.*

*Response: OSEP agrees that States have some discretion in making annual LEA determinations. The Department has advised States that, at a minimum, a State’s annual determination process must include considerations of the following: an LEA’s performance on all SPP compliance indicators (e.g., Indicators 9, 10, 11, 12, 13, 15, 16, 17, and 20), whether an LEA submitted valid and reliable data for each indicator, LEA-specific audit findings, and any uncorrected noncompliance from any source. The commenter is correct that there may be differences across states.*

*Comment: One commenter noted that there is no requirement for public reporting of LEA determinations. The commenter stated that, while currently states are not required to make public the annual status of LEA determinations, the proposed addition to data collection and reporting will effectively take away the states’ right to not report this information publicly. In the Notice of Proposed Information Collection Request package, specifically the Supporting Statement for Request for OMB Approval under the Paperwork Reduction Act, Section A. Justification, #16, Plans for tabulation and publication, it states, “OSEP will tabulate and display the information submitted by States in a variety of ways. The primary vehicles of distribution are through the Secretary’s Annual Report to Congress. . . and through publication*

*of these data on the Internet... “This strongly suggests that LEA determinations status information will be made available to the public as a function of the OSEP reporting.*

Response: The commenter is correct and OSEP believes this is an appropriate outcome. A state’s determination process should be transparent to the public.

*Comment: One commenter noted that the regulations implementing the IDEA require that LEAs provide the State educational agency with data on the children receiving services under Coordinated Early Intervening Services. These regulations do not, however, authorize nor require the reporting of these data to the OSEP. The proposed data collection and reporting would in fact create such a requirement where none currently exists in the law or regulations. Further, it is not reasonable to expect the SEAs to have collected these data in a time frame consistent with the proposed reporting period. States’ systems for such data collection vary, given that this has not been a federal reporting requirement in the past and would, therefore, takes time to revamp.*

Response: The commenter is correct that the IDEA does not specifically require the reporting of the CEIS data to the Department. However, OSEP is required to oversee the implementation of IDEA and Section 618 (a)(3) of IDEA provides the authority to collection information that is required to achieve this purpose.

Comment: *One commenter noted that on page 2 of 4 of the proposed Table 8 question 2 states, “Was the determination status of the LEA/ESA “meets requirements in FFY 2009?” With the release of the American Recovery and Reinvestment Act (ARRA) funds for FFY 2009, the basis for determination eligibility for reducing MOE, in accordance with OSEP guidance revised July 1, 2009, is the most current determination status made based on FFY 2007 (2007-2008 school year) data submitted to OSEP January 30, 2009. The data proposed for collection is not available on November 1, 2010. The determination status of local school systems and public agencies for FFY 2009 is not made until after the submission of MSDE’s FFY 2009 State Performance Plan (SPP) and Annual Performance Report (APR) on February 1, 2011.*

Response: OSEP agrees a clarification is needed in the instructions. OSEP has revised the form to clarify that the State should report whether the state determined the LEA or ESA ‘met requirements’ in its most recent determination on which the decision to reduce MOE in FFY 2009 was based. States are also required to report which school year’s data (i.e., 2007-08 or 2008-09) was used to make the LEA/ ESA determinations for the FFY 2009 MOE reduction.

Comment: *One commenter stated that the estimated paperwork burden and cost to states and local education agencies is underestimated.*

Response: OSEP does not agree. While OSEP recognizes the wide range of data systems in States and the costs associated with modifying those systems, OSEP contacted several States to establish a reasonable estimate for this data collection. OSEP asked states to consider the time and resources it would take a State to conduct training, data-quality checks, and follow-up with

LEAs about data anomalies. In order to calculate burden, OSEP first estimated the number of hours required per State and per LEA for States with and without individual student records at the State level. An average was calculated for States and LEAs. OSEP then calculated the total burden for all States by multiplying the average number of hours by 60 (60\*average State burden). Next, OSEP estimated average LEA burden. For each State, an average of 260 LEAs per State was used. OSEP calculated total LEA burden per State by multiplying 260 by the average LEA burden. They calculated total LEA burden by multiplying 60\*260\*average LEA burden. Based on the State responses, OSEP believes the burden estimate is reasonable.

Comment: *One commenter noted that the proposed Table 8 appears to have some calculation errors. The MOE reduction is supposed to be 50% of the increase in funds, but the instructions say that the percentage of reduction is calculated by dividing the dollar amount of the reduction by the FFY 2009 allocation. The commenter believes it should be divided by the increase from FFY 2008 to FFY 2009. There also needs to be a place for the auto-calculation of the required 15% of Part B 611 and Part B 619 funds for CEIS if a local school system or public agency is determined to be significantly disproportionate.*

Response: OSEP agrees a clarification is needed in the instructions. OSEP revised the Table 8 instructions to clarify the calculations used to determine the percent of available MOE reduction. OSEP also inserted a column for the auto-calculated percentage of funds used for CEIS if an LEA/ESA is determined to be significantly disproportionate.

Comment: *One commenter noted that, when the CEIS reports are submitted by the LEA to the SEA at the end of the 09-10 school year, they would include any student who received CEIS in 07-08 and 08-09 and was then found eligible for special education in 09-10. However, the directions for column three exclude the 07-08 school year.*

Response: OSEP agrees that the number of children who received CEIS under IDEA at anytime in the past two years includes the 2007-08 school year. OSEP revised the Table 8 instructions and table grid to include the 2007-08 school year for this data element.