

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL UNDER THE
PAPERWORK REDUCTION ACT**

Report on IDEA Part B Maintenance of Effort Reduction (34 CFR §300.205(a)) and
Coordinated Early Intervening Services (34 CFR §300.226)

A. JUSTIFICATION

1. Circumstances necessitating information collection.

The provisions of 34 CFR §§300.205(a), regarding maintenance of effort (MOE) reduction, and 300.226, regarding coordinated early intervening services (CEIS) have been incorporated in regulation since the final Individuals with Disabilities Education Act (IDEA) Part B regulations issued on August 14, 2006.

Specifically, 20 U.S.C. 1413(a)(2)(C)(i), and its implementing regulation at 34 CFR §300.205(a), allows, with certain exceptions, a local educational agency (LEA) to reduce its level of state and local expenditures (otherwise known as “maintenance of effort”) by not more than 50 percent of the amount of the excess for any fiscal year for which the allocation received by the LEA exceeds the amount the LEA received for the previous fiscal year.

20 U.S.C. 1413(f)(1), and its implementing regulation at 34 CFR §300.226, allows an LEA to use not more than 15 percent of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement CEIS. Further, 20 U.S.C. 1413(f)(4), and its implementing regulation at 34 CFR §300.226(d), requires each LEA that develops and maintains CEIS to annually report to the State educational agency (SEA) on: the number of children served under this section who received CEIS; and the number of children served under this section who received CEIS and subsequently received special education and related services under Part B of the Act during the preceding two year period.

IDEA (P.L. 108-446) also allows the Secretary of Education to obtain data on the provision of CEIS and MOE reduction. The specific legislative authority may be found in 20 U.S.C. 1418(a)(3).

Legislative authority 20 U.S.C. 1418(a)(3) requires that:

"(a) IN GENERAL- Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education and the public on the following:

(3) on any other information that may be required by the Secretary."

Due to the enactment of The American Recovery and Reinvestment Act of 2009 (P.L. 11-5; ARRA) and 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), it is necessary to collect information on the implementation of 34 CFR §§300.205(a) and 300.226. Collecting this information will allow the Department of Education (Department) to: monitor the reduction of MOE; determine the amount of FY 2009 Part B funds (both regular IDEA and IDEA ARRA funds) reserved for CEIS; determine programmatic needs; exercise its fiduciary responsibilities to prevent fraud, waste and abuse and to ensure the effective use of FY 2009 Part B funds; and provide information to Congress and the public regarding LEAs that took advantage of these flexibilities.

The data collection form provides instructions and information for States when submitting data on the IDEA provisions of CEIS (34 CFR §300.226) and MOE reduction (34 CFR §300.205(a)). The form provides a format for collecting data on allocations of IDEA funds; the dollar amount of MOE reduction; the dollar amount reserved for CEIS; and the number of children receiving CEIS disaggregated by LEA/ educational service agency (ESA).

2. Use for which the information is gathered.

The Office of Special Education Programs (OSEP) will use the information collected on this form to prevent the fraud, waste and abuse of IDEA funding, to monitor States for compliance with Federal statute and regulations, to assist in determining programmatic needs, and to provide information to Congress and the public on how districts have used the CEIS and MOE provisions of IDEA. The data gathered through this collection will provide the SEA with information regarding the number of children in each LEA that receive services through CEIS and whether these children subsequently receive special education and related services.

3. Use of improved information technology.

These data will be collected via a web-based data submission system. The system will provide for direct data entry, as well as an interface for uploading data files. The data system will integrate data validation features across rows, columns, and pages of data to ensure proper structure of the data and permitted values according to reporting specifications.

4. Efforts to identify duplication.

The information requested does not represent any duplication of paperwork, content, reporting, or performance requirements beyond those imposed under the statute. This information is available only from SEAs that receive it from LEAs and intermediate educational units.

5. Small businesses.

The information requested does not involve the collection of information from entities classified as small organizations.

6. Consequence of less frequent collection.

20 U.S.C. 1418(a) requires: "Each State that receives assistance under this part, and the Secretary of the Interior, shall provide data each year to the Secretary of Education..."

7. Special circumstances.

There are no special circumstances associated with this data collection.

8. Federal Register notice/consultation outside the agency.

The Department invited interested persons to comment on this proposed information collection request in a notice published in the Federal Register, Volume 74, No. 187 on September 29, 2009. The Department expressed interest in receiving public comment on five specific issues: whether the collection is necessary to the proper functions of the Department; whether the information will be processed and used in a timely manner; the accuracy of the burden estimate; how the Department might enhance the quality, utility and clarity of the collected information; and how the Department might minimize the burden on respondents. Comments were due on or before November 30, 2009.

In response to this request, the Department received 8 comments, generally addressing 20 issues of concern. The issues raised in these comments are described below and followed by the Department's response.

Comment: *Three commenters stated that the estimated paperwork burden and cost to States and LEAs is underestimated.*

Response: OSEP recognizes the wide range of data systems in States and the costs associated with modifying those systems; therefore, 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 develop data collection systems and 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 understands that some States have a larger number of LEAs while other States have a smaller number of LEAs; however, the average number of 260 provides a reasonable figure that accounts for the variation across States. OSEP calculated total LEA burden per State by multiplying 260 by the average LEA burden. We then calculated total LEA burden by multiplying 60*260*average LEA burden. The actual calculations for the burden estimate are provided in the Supporting Statement associated with this information collection clearance package. Based on the State responses to OSEP's request for information on the time required to respond to this collection, OSEP believes the burden estimate is reasonable.

Comment: Six 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 recipient reporting 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 recipient reporting is very specific to the data required under section 1512(c) of ARRA. Data fields were developed by the Office of Management and Budget (OMB) and included in FederalReporting.gov. The Department explored with OMB the possibility of collecting additional elements through the ARRA reporting mechanism and OMB determined that the Department could not use FederalReporting.gov to collect the required additional data.

Comment: Three commenters noted that there is no statutory requirement for public reporting of LEA determination status.

Response: The Secretary has the authority under IDEA section 618(a)(3) to collect any data that the Secretary requires. Furthermore, section 618(b)(1) provides that any data required to be collected under section 618(a) shall be publicly reported by each State in a manner that does not disclose data identifiable to individual children. OSEP believes public reporting of LEA determinations is appropriate.

Comment: One commenter noted that States are not currently required to post information on which LEAs are required to use 15% of funds for CEIS due to

significant disproportionality and which LEAs voluntarily use up to 15% of funds for CEIS.

Response: The commenter is correct that neither the statute nor the regulations specifically require that States or LEAs report this information to the public. However, OSEP believes that it is important that an LEA's use of IDEA funds and a State's enforcement actions be available for public review. See answer to prior comment for statutory authority to collect and require this data to be publicly reported.

Comment: *Six commenters noted that at a time when States and LEAs are experiencing severe financial cutbacks and limited resources, requiring another data collection that does little to improve outcomes for children, and will take more than a total of 1 million hours, is not the best use of limited financial and personnel resources.*

Response: OSEP recognizes the fiscal and resource-based challenges States face in these difficult economic times. However, due to the unprecedented amount of IDEA funding being provided to States in FFY 2009, it is necessary to collect information on the implementation of 34 CFR §§300.205(a) and 300.226 during FFY 2009 to prevent fraud, waste and abuse of IDEA funding, to monitor States for compliance with Federal statute and regulations, to assist in determining programmatic needs, and to provide information to Congress and the public on how districts have used the MOE and CEIS provisions of IDEA. The FFY 2009 funding increases make it likely that many LEAs will take advantage of the MOE reduction permitted under 34 CFR §300.205(a) or reserve amounts under 34 CFR §300.226 to provide CEIS. On October 27, 2009, the Department published a final notice that allows States to reserve between \$100,000 and \$500,000 of additional IDEA funds in light of the increased ARRA data collection and reporting requirements. Those funds can be used to support this collection. This final notice is available at <http://edocket.access.gpo.gov/2009/pdf/E9-25839.pdf> .

Comment: *Four commenters noted that they felt that it was unnecessary and burdensome to have this as a permanent annual collection when the influx of funding under the ARRA is temporary.*

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 stated that they are concerned about meeting the reporting deadlines in the proposed collection and that this request fails to take into account the timelines that States and LEAs 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 LEAs will have to put into place to revamp their systems and train personnel for a new data collection, which could take up to 3 years. One commenter believes that the SY 2009-10 data should not be collected by the Department because States need additional time to review and improve the quality of these data before providing them to the Federal government for their interpretation.

Response: OSEP believes it is providing an adequate amount of time to prepare and submit these data to the Department. OSEP provided notification to States and LEAs 20 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 20 months is an ample period of time to prepare for this submission. Based on comments from States, OSEP made limited revisions to the data elements States are required to report on the form approved in August 2009 under emergency clearance and delayed the submission date by 5 months in order to take into account the time needed for States to prepare this data submission. In addition, States are currently required under IDEA section 613(f)(4) to collect data related to CEIS from LEAs. Finally, the majority of the data related to the MOE reduction should be readily available to SEAs. OSEP will not delay the start date of this collection to FFY 2010. Due to the enactment of the ARRA, States have received an unprecedented amount of IDEA funding during FFY 2009. The disbursement of \$11.7 billion in IDEA Part B ARRA funds to LEAs in addition to the regular FFY 2009 appropriation of \$11.8 billion during FFY 2009 provides the LEAs with FFY 2009 allocations that far exceed those of FFY 2008; thereby making it likely that LEAs will take advantage of the MOE reduction permitted under 34 CFR §300.205(a) or reserve amounts 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 FFY 2009 to prevent the fraud, waste and abuse of IDEA funding, to monitor States for compliance with Federal statute and regulations, to assist in determining programmatic needs, and to provide information to Congress and the public on how districts have used the CEIS and MOE provisions of IDEA.

Comment: *Two commenters stated that the proposed data collection form is inconsistent with State procedures for making local determinations. The commenters argue that all LEAs, except those identified as “needs substantial intervention,” are eligible for MOE reductions.*

Response: The commenters are not correct. Pursuant to IDEA section 616(f) and 34 CFR §300.608(a), 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. Additional

guidance is available at <http://www.ped.state.nm.us/seo/dl09/idea-b%20Guidance.pdf> .

Comment: *One commenter noted that OSEP already receives fiscal audit information as required under the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156.*

Response: The Single Audits do not provide the information gathered by this information collection but rather look at States' and LEAs' procedures and the implementation of those procedures. Data related to whether an LEA reduces MOE or uses IDEA funds for CEIS are not collected through the Single Audits.

Comment: *One commenter requested clarification on how to measure the recipients who are benefiting from the CEIS funds, since items purchased might be targeted for one student and are often housed in a classroom of 20 students who equally profit.*

Response: Those children who are struggling academically or behaviorally, meet the LEA's criteria of being in need of additional support, and participate in the initiative supported with CEIS funds, should be counted as receiving CEIS in the year(s) of, or the year(s) immediately following, the initiative and tracked for the following two years. The commenter is referred to OSEP Memorandum 08-09, specifically question #7, for further guidance. This memorandum is available at <http://www.ed.gov/about/offices/list/osers/osep/policy.html>.

Comment: *One commenter asked if there is an expectation to track highly mobile populations within and outside of the State.*

Response: OSEP understands that providing these data for highly mobile populations is difficult; however, SEAs should make a good faith effort to capture these children in their data.

Comment: *One commenter asked if LEAs are not timely in providing data to the SEA, who will set the consequences for noncompliance and how will these penalties be enforced.*

Response: According to 34 CFR §300.640, it is the SEA's responsibility to submit data required by section 618 of the IDEA at the time specified and on the forms provided by the Secretary. This data collection is authorized under IDEA section 618(a)(3). Failure to comply with data reporting requirements constitutes failure to comply substantially with program requirements (34 CFR §76.720(c))

(2)), and may be addressed by the Department through our normal enforcement mechanisms. States may use any technical assistance or enforcement action available to them in order to encourage LEAs to submit these data in a timely and accurate manner. Furthermore, 34 CFR §76.722 gives States authority to require LEAs to submit data and could be used by the State in taking enforcement action against an LEA that is not timely in providing data.

Comment: One commenter asked if OSEP's collection form will be the only approved form for reporting and how OSEP will use this information.

Response: According to 34 CFR §300.640(b), SEAs must submit data required by section 618 of the IDEA on the form provided by the Secretary. OSEP will provide online, electronic submission instructions to facilitate the process of submitting these data. OSEP will use the data to prevent the fraud, waste and abuse of IDEA funding, to monitor States for compliance with Federal statute and regulations, to assist in determining programmatic needs, and to provide information to Congress and the public on how districts have used the CEIS and MOE provisions of IDEA.

Comment: One commenter asked if there will be a distinction between LEAs required to use funds for CEIS and those who voluntarily set aside these funds, or will the data be combined.

Response: The data for LEAs or ESAs who are required to use funds for CEIS and those who voluntarily set aside funds for CEIS will be separate. In section C of the data collection form, States are required to submit data on whether each LEA or ESA was required to use 15% of IDEA 611 and 619 funds for CEIS due to significant disproportionality (Column C2A) and the amount that was reserved for the required CEIS in that LEA or ESA (Column C2B). Under a separate set of columns in section C, States are required to submit data on whether each LEA or ESA voluntarily used up to 15% of IDEA 611 and 619 funds for CEIS (Column C3A) and the amount that was reserved for the required CEIS in that LEA or ESA (Column C3B).

Comment: One commenter requested columns with programmed auto-calculation for the following data elements: (1) the increase from FFY 2008 to FFY 2009 allocation for section 611 funds (Columns A2A & A2B); and (2) the increase from FFY 2008 to FFY 2009 allocation for section 619 funds (Columns A3A & A3B).

Response: OSEP added a Column A2C that will auto-calculate the increase in the total LEA or ESA allocation for section 611 and a Column A3C that will auto-

calculate the increase in the total LEA or ESA allocation for section 619 to the information collection form.

Comment: *One commenter requested a note indicating that Column B3 must be “-9” if Column B2 is not “meets the requirements and purposes of Part B” be inserted in the instructions for section B.*

Response:

The instructions for section B explain how States should report in Column B3 when an LEA has not reduced MOE.

Comment: *One commenter requested a column programmed to auto-calculate 15% of the 611 and 619 funds for FFY 2009 in section A and a note that indicates this amount should match the figures reported in Column C2B.*

Response: OSEP added a Column A4 that will auto-calculate the total LEA or ESA allocation for sections 611 and 619 for FFY 2009 and a Column A5 that will auto-calculate 15% of the total of 611 and 619 funds for FFY 2009 to the information collection form. OSEP also inserted the following note under the instructions for section C, “The figure reported in Column C2B should match the figure auto-calculated in Column A5.”

Comment: *One commenter requested a note indicating that if Column C2A is “yes”, the Column C2C must equal 15% of IDEA 611 and 619 funds.*

Response: OSEP inserted the following note under the instructions for section C, “If the Column C2A response is ‘Yes’ to indicate that the LEA or ESA was required to reserved funds for CEIS, then the figure in Column C2B and the percentage auto-calculated in Column C2C should equal 15% of the total LEA or ESA allocation for sections 611 and 619 in FFY 2009.”

Comment: *One commenter requested a note indicating that the percentage in Column C3C must be less than or equal to 15% of IDEA 611 and 619 funds.*

Response: OSEP inserted the following note under the instructions for section C, “If the Column C3A response is ‘Yes’ to indicate that the LEA or ESA voluntarily used funds for CEIS, then the figure in Column C3B and the percentage auto-calculated in Column C3C should be less than or equal to 15% of the total LEA or ESA allocation for sections 611 and 619 for FFY 2009.”

Comment: *One commenter requested OSEP clarify the definition of “reserved” used in relation CEIS (Columns C2B and C3B).*

Response: “Reserved” means the LEA or ESA has set aside the funds to be used for CEIS. As stated in the OSEP Memorandum 08-09 available at <http://www.ed.gov/policy/speced/guid/idea/ceis.html> under question 21, these funds must be used during the period of their availability for obligation and must be used for comprehensive CEIS regardless of whether the significant disproportionality is resolved during the time that the funds are available.

Additional comments will be solicited through a Federal Register Notice at the same time this collection is pending at OMB.

9. Payments or gifts to respondents.

No payments or gifts are provided to respondents for completing this information request.

10. Assurance of confidentiality.

No assurance of confidentiality is provided to respondents.

11. Questions of a sensitive nature.

There are no questions or requirements of a sensitive nature contained in the form.

12. Estimate of respondent burden.

The estimate of burden is based on consultation with representatives of several SEAs. The estimate of total respondent burden is based on 60 reporting entities¹. Note that it is not possible to estimate an exact burden amount for each State because a variety of factors influence the collection, such as the variation in the number of LEAs in each State, the number of students served in each LEA, and the sophistication of the data system. In making the following estimates, we used different burdens based on whether SEAs use a database with individual student records at the State level to collect these data.

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

¹ 60 States and Outlying Areas refer to: 50 States, District of Columbia, Puerto Rico, Virgin Islands, American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Bureau of Indian Education.

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. We calculated total LEA burden by multiplying 60*260*average LEA burden.

For SEAs, the estimated average burden is 48 hours per State agency or 2,880 hours total. The estimated average LEA burden is 66 hours or 17,160 hours of LEA burden per State. The total burden estimate is 1,032,480 hours

Number of Respondents	SEA Burden Hours	LEA Burden Hours	Total Burden Hours²
48 States with Individual Student Records at the State Level	47	64.5	807,216
12 States without Individual Student Records at the State Level	52	72	225,264
60 States ³	48 (Avg.)	66 (Avg.)	1,032,480

OSEP estimated respondent costs as \$20 per hour. As indicated above, the estimated total number of burden hours is 1,032,480. Therefore, the estimated cost to the respondents is \$20,649,600.

13. Estimate of cost to respondents.

There are no additional costs other than the cost burden identified in 12.

² Total burden is based on averages rounded to the nearest hour.

³ 60 States and Outlying Areas refer to: 50 States, District of Columbia, Puerto Rico, Virgin Islands, American Samoa, Guam, Marshall Islands, Micronesia, Northern Marianas, Palau, and the Bureau of Indian Education.

14. Estimate of costs to the Federal Government.

The following table represents the estimated costs to the Federal Government associated with the form.

Copying:	\$50
Mailing:	\$300
Staff:	\$96,000
Contractor Data Services:	<u>\$165,000</u>
	\$261,350

Contractor data services include costs for updating the database and processing, verifying, and analyzing the data.

15. Reasons for program changes or adjustments.

Based on the comments received during the 60-day comment period, OSEP made the following revisions to this information collection: (a) inserted columns to auto-calculate the increase in the total LEA or ESA allocation of Section 611 funds from FFY 2008 to FFY 2009, the increase in the total LEA or ESA allocation of Section 619 funds from FFY 2008 to FFY 2009, the total LEA or ESA allocation of Section 611 and 619 funds for FFY 2009, and 15% of the total LEA or ESA allocation of Section 611 and 619 funds for FFY 2009; and (b) inserted clarifications associated with reporting the amount or percentage of funds reserved for required CEIS and the amount or percentage of funds voluntarily used for CEIS.

16. Plans for tabulation and publication.

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 (P.L. 108-446, §664(d)(2)) and through publication of these data on the Internet (IDEAdata.org). OSEP will also use this information for the purposes of monitoring, focusing discretionary activities, and suggesting topics for model demonstration projects. Occasionally, the data may be summarized and presented at conferences and in ad hoc reports or articles submitted for publication.

17. Display of OMB expiration date.

The OMB expiration date will be displayed on the form.

18. Exceptions to the certification statement.

There are no exceptions to the certification statement.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not permit the use of statistical methods.