



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

Mr. Lawrence Gloeckler
Deputy Commissioner for Vocational and
Educational Services for Individuals
with Disabilities
State Education Department
111 Education Building
Washington Avenue
Albany, New York 12234

OCT 21 1999

Dear Mr. Gloeckler:

Thank you for your September 9, 1999 letter regarding the suballocation of section 619 (Preschool Grant) funds under the Individuals with Disabilities Education Act (IDEA). In this letter, you agreed to provide a written plan that would fully address the concerns raised in the Department's letter of June 28, 1999, commencing with the 2000-2001 school year. I am writing regarding the proposals made in that letter, which were also discussed with members of my staff during a conference call on Wednesday September 8, 1999.

We understand from the conference call that Federal fiscal year (FFY) 1999 section 619 funds have not yet been distributed, but that the New York State Education Department (NYSED) believes that it would be very difficult for it to revise its procedures in time for the FFY 1999 suballocations. The Department has considered the concerns raised during the conference call. However, we cannot accept your proposal that the Office of Special Education Programs (OSEP) give NYSED the authority to allocate its FFY 1999 section 619 funds, which NYSED received on August 25, 1999, in a manner that is contrary to the requirements of section 619(g) of the IDEA and its implementing regulations at 34 CFR 301.30-301.31.

As you know, the IDEA Amendments of 1997 (IDEA '97), enacted on June 4, 1997, made significant changes in how Preschool Grant funds are distributed to States and local educational agencies (LEAs). We believe that New York has had ample notice of the new requirements. The Department conducted regional trainings on IDEA '97 during the summer of 1997. The Secretary issued proposed regulations for the Preschool Grant program on October 22, 1997. On June 1, 1998, the Secretary published final regulations for the Preschool Grant program. These regulations emphasized and clarified the changes in how States, are required to allocate funds to LEAs. The changes applied to preschool grant funds that became available on July 1, 1998. All States were required to ensure that their procedures for allocating FFY 1998 section 619 funds to LEAs were consistent with statutory and regulatory requirements. As part of a monitoring visit conducted during the weeks of February 8 and April 19, 1999, OSEP informed NYSED, based on information provided by State officials during the visit, that its method of

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allocating its FFY 1998 section 619 funds was out of compliance with IDEA. In a June 28, 1999 letter, OSEP explained why NYSED's method for allocating section 619 funds to LEAs did not meet the requirements of IDEA and required NYSED to develop procedures for distributing section 619 funds, and obtain OSEP's written approval of those procedures, prior to distributing its FFY 1999 funds. This issue was also brought to NYSED's attention in the August 25, 1999 grant award letter, and NYSED was again advised to revise and implement approved procedures for distribution of its FFY 1999 section 619 funds.

As we stated in our June 28, 1999 letter, OSEP found that NYSED had distributed its FFY 1998 section 619 funds directly to the "approved preschool programs" where the children were served. Approved preschool programs were found in LEAs, BOCES programs, State-operated and State-supported programs and private schools. As indicated in our letter, a State may make subgrants of section 619 funds only to LEAs that meet the definition at section 602(15) of IDEA and 34 CFR 300.18 and have established their eligibility under section 613 of the Act. NYSED must determine which approved preschool programs fit within the definition of LEA. Private schools do not fit within the definition of LEA. Providing subgrants directly to those entities that do not fit within the definition of LEA is inconsistent with section 619(g)(1) of IDEA.

OSEP also found that NYSED was awarding base payments using the most recent preschool child count (not the December 1, 1996 child count) in order to allow for annual upward and downward changes in the number of children served. This is inconsistent with section 619(g)(1)(A) which provides that the base payment is the amount the LEA would have received under section 619 for FFY 1997 (based on the December 1, 1996 child count) if the State had distributed 75% of its Preschool Grant. The regulations specify the limited circumstances under which adjustments may be made to the base payments. NYSED must meet the requirements of section 619(g)(1) and 34 CFR 301.30- 301.31 when it suballocates its FFY 1999 section 619 funds.

In our June 28, 1999 letter, we outlined the measures that New York needs to take to be in compliance with the law. In order to ensure that its procedures are consistent with statutory and regulatory requirements, NYSED must revise its procedures for suballocating section 619 funds and submit those revised procedures to OSEP for approval prior to making FFY 1999 suballocations. In our June 28, 1999 letter, we also stated that NYSED must make appropriate adjustments to its FFY 1998 Preschool Grant allocations to ensure that each eligible LEA receives the amount of Preschool Grant funds to which it was entitled in FFY 1998 under section 619(g). However, because ineligible entities cannot receive future awards under the Preschool Grant program, adjustments are not an option for correcting overpayments to ineligible grantees that have already spent their grant funds. Instead, we will address this issue through the Department's audit resolution process.

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NYSED is required to make downward adjustments to subgrants only to the extent eligible entities were overpaid in FFY 1998. In order to minimize any disruptions, NYSED may make adjustments for FFY 1998 any time before September 30, 2000 (the date when FFY 1998 funds expire under the Tydings Amendment). NYSED may recover those section 619 funds from eligible entities that were overpaid in FFY 1998 by recovering any available FFY 1998 carry-over funds or making downward adjustments to the LEA's FFY 1999 subgrant or FFY 2000 subgrant (assuming allocations to LEAs are made by September 30, 2000). To the extent section 619 funds are retrieved from eligible LEAs that were overpaid in FFY 1998, NYSED must distribute those section 619 funds to eligible entities that were underpaid in FFY 1998. Again NYSED may use any available FFY 1998 carry-over funds or make upwards adjustments to the LEA's FFY 1999 or FFY 2000 subgrant.

We understand from our conference call that it may be difficult for NYSED to revise its procedures for allocating section 619 funds to LEAs. We are committed to working with NYSED in a cooperative and constructive manner to ensure that funds are distributed in accordance with the statute. However, it is your responsibility to ensure that the formula is implemented as mandated by section 619(g) of IDEA. If we can be of further assistance, please contact JoLeta Reynolds at 202-205-5507.

Sincerely,
Judith E. Heumann
Assistant Secretary