



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICE

JUL 9 1999 THE
ASSISTANT SECRETARY

Honorable Lisa Graham Keegan
Superintendent of Public Instruction
1535 West Jefferson
Phoenix, AZ 85007

Dear Superintendent Keegan:

This letter is in response to your correspondence of March 2, 1999, regarding the new Preschool Grants funding formula under section 619 of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA 97). You are requesting that the Department of Education grant waivers of certain portions of the formula that, due to specific circumstances in Arizona, will create substantial inequity of funding for preschool-aged children with disabilities. The new funding formula is statutorily based and the Department has no authority to issue waivers. The new formula became effective for the Preschool Grants program under section 619 with the federal fiscal year 1998 appropriation. The revised formula also becomes effective for Assistance to States under section 611 when the appropriation for section 611 is more than \$4,924,672,200.

In order to receive Section 619 funds, local educational agencies must establish eligibility under Section 613 of the Act and must make a free appropriate public education available to all 3-, 4-, and 5-year old children with disabilities. (The age of children with disabilities served is the defining factor, not the title of the program, such as "kindergarten" rather than "preschool." "Local educational agency" is defined at 34 CFR §300.18, and includes educational service agencies (including entities that meet the definition of *intermediate educational unit* in section 602(23) of IDEA as in effect prior to June 4, 1997) and public charter schools established as local educational agencies under State law. State agencies that received funds for fiscal year 1994 under the Chapter 1 Handicapped program (subpart 2 of part D of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965) are treated as local educational agencies for purposes of section 619 to the extent that these agencies participate in the Preschool Grants program.

The State allocation to each eligible local educational agency is the total of three amounts. (1) The base payment is the amount the local educational agency would have received in federal fiscal year 1997 had the State allocated 75% of its federal fiscal year award to the local level. The regulations at 34 CFR §301.31 (b) (June 1, 1998, copy enclosed) provide information on the circumstances when base payments should be adjusted. (2) The population payment (85 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction. Notice that this is not the

Page 2 - Honorable Lisa Graham Keegan

preschool-aged population in the agency, nor is it related to disability. States must use the best data available on the numbers of children enrolled in public and private elementary and secondary schools. States are not required to establish new data collection procedures in order to obtain private school enrollment figures. (3) The poverty payment (15 percent of the remaining flow-through funds after the base payments are made) is an amount based on the eligible agency's relative number of children living in poverty, as determined by the State educational agency. The poverty factor chosen must be applied uniformly to all eligible local educational agencies.

You are requesting that the Department grant Arizona a waiver with regard to two requirements related to the population payment portion of local awards. The first request is based on your view of an equity issue. Because of variations in the school-age range served by local educational agencies, some local educational agencies will receive proportionately more of the population payment, regardless of the number of preschool-aged children served. To overcome this inequity, Arizona distributed its Federal fiscal year 1998 Section 619 funds on the basis of the relative numbers of children enrolled in elementary, schools within the agency's jurisdiction. Arizona requests permission to continue this allocation method. The Department cannot grant this exception to the statutory formula. In order to meet the requirement of section 619(g)(1)(B)(i), Arizona must include the relative numbers of children enrolled in public and private elementary and secondary schools in calculating the population payment even if it results in some local educational agencies receiving a larger share of the population payment.

You are also requesting that the Secretary grant Arizona a four- year waiver on the portion of the new formula related to private school enrollment figures. You state in your letter that Arizona does not regulate private schools and does not maintain private school enrollment data. To do so would require establishment of a new data collection. Also, private school enrollments may consist of students from many local educational agencies and those local educational agencies are responsible for the costs associated with a child's placement, in the private school. States must determine the extent to which private schools are considered under the jurisdiction of particular local educational agencies. It is within the State's discretion to determine whether the local educational agency where the private school is located or the local educational agency responsible for the costs associated with a child's placement in the private school should include the child in its private school enrollment count. Since Arizona does not maintain its own private school enrollment data, it should obtain this data from other sources. If Arizona determines that no such data is available for Federal fiscal year 1998 or 1999, then the private school enrollment data would not be included in the population payment portion of the award to local educational agencies.

In order to ensure that Arizona distributes its Preschool grant funds in accordance with the formula required at section 619(g)(1) of ID EA and the implementing regulations at 34 CFR §§301.30 and 301.31, the Arizona State Department of Education must:

1. Revise its procedures to ensure that the population payment portion of the Preschool Grant allocations to local educational agencies meets all requirements of 20 US.C. 1419(g)(l)(B)(i) and 34 CFR §§301.31(c)(1) and (3).
2. Obtain the Office of Special Education Programs' approval of the procedures developed under #1 prior to distributing Federal fiscal year 1999-Preschool Grant funds.
3. Upon approval of those procedures, make appropriate adjustments to the Federal fiscal year 1998 Preschool Grant allocations to ensure that each local educational agency receives the amount of Preschool grant funds to which it was entitled in Federal fiscal year 1998 under section 619(g).

I hope the information in this letter adequately addresses your concerns regarding the new Preschool Grant funding formula. Please submit your revised methods for making Preschool Grant allocations to eligible local educational agencies to Ms. Ruth Ryder, Director, Monitoring and State Improvement Planning Division, Office of Special Education Programs, 400 Maryland Avenue, SW, Room 3609 Switzer Building, Washington, DC 20202; telephone: (202) 205-5547.

Sincerely yours,

dith E. Heumann