



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

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Directors of Special Education, Inc.
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Dear Dr. Fields:

This letter is in response to your recent inquiry regarding the final regulations (June 1, 1998) implementing the Preschool Grants for Children with Disabilities program under Section 619 of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997. Your concerns with the regulations focus on §301.31- allocations to local educational agencies. Your letter contains four assumptions and two questions, which will be addressed individually, in turn.

Assumption #1: Base amount, i.e., 75% of the FY97 award, remains constant.

Response: You are correct that the amount a State uses to provide base payments to local educational agencies (LEAs), which is calculated as 75 percent of the State's award for Federal fiscal year 1997, remains constant for fiscal year 1998 and future years.

Assumption #2: Which entity receives all or part of the base award can vary from year to year, depending on the creation or consolidation of LEAs and charter schools.

Response: Base payments are awarded to each LEA in a State that establishes eligibility in accordance with section 613 of IDEA, including charter schools if they are constituted as LEAs. The base payment is the amount that LEA would have received under section 619 in Federal fiscal year 1997 if the State had distributed 75% of its Federal fiscal year 1997 award to those agencies (34 CFR §301.31(a)). This base payment may change if one of the conditions set forth at 34 CFR §301.31(b) occur. These conditions include creation of a new LEA, where the new LEA applies for funds under this program; one or more LEAs combining into a single new LEA; or changes in the geographic boundaries or administrative responsibility for providing services to children with disabilities in the eligible age range. Under the regulations, the base award for new and previously existing affected LEAs, once recalculated, becomes the new base payment for the LEAs. The base payments would not change unless the payments subsequently needed to be recalculated pursuant to 34 CFR §301.31(b).

Assumption #3: State-operated programs are included in the definition of "LEA" and are included in any necessary redistribution of the base award.

Response: Regarding eligibility of State agencies other than the State Educational Agency, any State agency 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, shall continue to be treated as an LEA for the purposes of section 619 of IDEA. These agencies also must meet the requirements of section 613 governing LEA eligibility. To the extent that these agencies participate in the Preschool Grants program, they would also be included in the redistribution of the base awards, if they are affected LEAs subject to a reallocation pursuant to 34 CFR §301.31(b).

Assumption #4: States make the necessary adjustments each year for base awards and distribution of new money based on population and poverty.

Response: In terms of the base award, a State makes an adjustment to an LEA's base payment only if one of the circumstances in 34 CFR §301.31(b) occur, such as the addition of a new LEA or reconfiguration of existing LEAs. The adjustments would be made based on the relative numbers of children with disabilities currently being served by the affected LEAs. Funds above the base allocation are distributed based on population and poverty and are calculated annually in accordance with annual changes in public and private elementary and secondary school enrollment figures and annual changes in the relative numbers of children living in poverty.

We now turn to the questions posed in you letter. Our responses are within the context of our responses to your assumptions.

Question #1: Is the base award calculated on a proportional amount, or does the money follow the child, i.e., an individual student tracking system?

Response: Each LEA is entitled to the amount it would have received under section 619 for fiscal year 1997 if the State had distributed 75 percent of its grant for that year, which distribution would be based on the December 1, 1996 count of children being served by the LEAs. An LEA's base amount would only change if that LEA were affected by a new LEA being created and the new LEA applies for funds, the LEA and one or more other LEAs combine, or the geographic boundaries or administrative responsibility for providing services to children with disabilities in the eligible age range changes (34 CFR §301.31(b)). As such, the SEA would recalculate the base amounts for the affected LEAs based on the number of children with disabilities the affected LEAs are currently serving.

This does not require an individual student tracking system. In each of the circumstances described above, at the time base awards are calculated, the SEA must identify the affected LEAs and determine how many preschool students with disabilities are currently served by the affected

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LEAs. The SEA must then recalculate the base payment of the previously existing LEA or LEAs and the new LEA on a proportionate basis. For example, if charter school A is established under State law as an LEA and meets the eligibility requirements of section 613 and enrolls children previously served by LEA B and LEA C, the SEA must divide LEA B and LEA C's total base payment by the number of preschool children with disabilities currently served by LEAs A, B, and C and then provide new charter school A its proportionate share. This base award, once recalculated, becomes the new base payment for LEAs A, B, and C and would not change unless payments subsequently need to be recalculated pursuant to §301.31(b). The SEA is not required to individually track each child, but must have a reasonable method for ensuring that when base payments are recalculated, affected LEAs are identified and the base payment is recalculated based on the number of students currently served by the affected LEAs.

Question #2: To which date does "currently provided [§301.31(b)(1)] refer -- July 1; date of creation of the new LEA/charter school; or, December 1?

Response: States have flexibility in recalculating the base payments. The base payment may be recalculated using the most recent child count, taken on December 1, or the last Friday in October, or the State may use more recent data such as data that reflects Fall enrollment. For example, a State that typically makes its suballocations in July may recalculate its base payments at that time to enable newly established charter schools, that are established as LEAs, to receive an appropriate share of Preschool Grants funds based on the number of children with disabilities ages 3 through 5 the charter school will be serving in the Fall.

I hope this letter adequately addresses the assumptions and questions in your letter related to the regulations at 34 CFR Part 301, which implement the IDEA Amendments of 1997 related to the Preschool Grants program.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs