



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

July 28, 2000

Ms. Rebecca Walk, Director
Special Programs Unit
Wyoming Department of Education
Hathaway Building, Second floor
2300 Capitol Avenue
Cheyenne, Wyoming 82002-0050

Dear Ms. Walk:

We appreciated meeting with you on May 2, 2000 to discuss your correspondence of August 11, 1999, requesting assistance with implementation of the Preschool Grants formula under section 619 of the Individuals with Disabilities Education Act (IDEA). As you know, the IDEA Amendments of 1997 made significant changes in how Preschool Grant (section 619) funds are distributed to States and to local educational agencies. The new formula in section 619 of IDEA became effective beginning with Federal fiscal year (FFY) 1998 Preschool Grant funds that became available on July 1, 1998.

Procedures for State educational agencies (SEAs) to allocate Section 619 funds to eligible local educational agencies are found at 34 CFR §§301.30-301.32 (copy enclosed). "Local educational agency" (LEA) 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). State allocations to each eligible LEA are no longer based on child count; rather, allocations are the total of three amounts:

(1) The *base payment* is the amount the LEA would have received under section 619 for FFY 1997 had the State allocated 75% of its FFY 1997 award to the local level. The regulations at 34 CFR §301.31(b) provide information on the circumstances when base payments should be adjusted.

(2) The *population payment* (85% 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 preschool-aged population in the local educational 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.

(3) The *poverty payment* (15% 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

living in poverty, as determined by the State educational agency. The poverty factor chosen must be applied uniformly to all eligible subgrantees.

In addition, the new formula for distributing Grants to States (section 611) funds to States and to LEAs became effective beginning with FFY 2000 Grants to States funds that became available on July 1, 2000. Procedures for SEAs to allocate section 611 funds to LEAs are found at 34 CFR §300.712(b). Each LEA will receive a base allocation consisting of the amount of Grants to States funds that the LEA would have received for FFY 1999 had the SEA distributed 75% of its FFY 1999 award to LEAs. Population and poverty payments are distributed as described in (2) and (3) above. As in the Preschool Grant program, the new formula will affect the amount of section 611 funds that the Department of Health, Division of Developmental Disabilities (DDD) receives under the Grants to States program.

According to your letter, under Wyoming's state statute, the DDD has been deemed an intermediate educational unit responsible for the provision of services to preschool children with disabilities aged 3 through 5. DDD then contracts with fourteen regional developmental preschool centers to provide these services. Five-year-old children with disabilities enrolled in kindergarten attend local elementary schools and receive services through the school district. Under Article 7, section 21-2-705 of the Wyoming Education Code, at least ninety-five percent of section 619 funds must be distributed pro rata to the DDD and school districts based on the number of preschool children with disabilities served. Since this provision is inconsistent with IDEA, Wyoming must amend this section of its state statute to be consistent with the requirements of section 619(g)(1) of IDEA, as amended, described above for distributing funds to LEAs.

You have asked whether Wyoming must distribute section 619 funds to the fourteen regional developmental preschool centers in accordance with the formula in section 619(g)(1) of IDEA. Because DDD fits within the definition of LEA at 34 CFR 300.18 and has established its eligibility under section 613, the State must distribute section 619 funds to DDD in accordance with the formula at 34 CFR 301.30-301.32. The State also must distribute section 619 funds in accordance with the formula to school districts that provide services to five-year old children with disabilities (or other eligible children ages 3 through 5). However, the regional preschool centers are not designated as elementary schools and are not affiliated with local educational agencies. Because DDD contracts with the centers and the centers are not eligible subgrantees, DDD is not required to distribute section 619 funds to these centers based on a formula. DDD can therefore continue to distribute section 619 funds to the centers based on a child count.

We discussed the impact of the new formula on the DDD, which serves approximately 80% of the eligible preschool children with disabilities in Wyoming. Under the new formula in IDEA, once the base payments are distributed, LEAs receive population and poverty payments, which are based on the relative numbers of children enrolled in elementary and secondary schools and the relative numbers of children living in poverty. It is our understanding that the DDD is not currently eligible for any portion of the population payment because the children served in the DDD are not currently considered by Wyoming to be in elementary school. If the five-year-old children at the DDD are considered enrolled in a kindergarten program in an elementary school under Wyoming State law, the DDD would be eligible for a population payment based on those five-year olds. If three and four-year-old children served by the DDD are likewise considered to

be in elementary school, the DDD would be eligible for a population payment based on those three and four-year-olds.

Because school districts can count the number of children in elementary and secondary schools living in poverty and the DDD can only count the number of children living in poverty that it serves, school districts will generally receive a larger share of the poverty payment. As time goes on and a larger portion of section 619 funds is distributed based on population and poverty, the situation for the DDD will become worse. Please note that this will also be the same for section 611 funds. At the meeting, we discussed options that Wyoming could utilize that would be consistent with section 619(g)(1) and would result in more section 619 funds being distributed to the DDD.

One option is to change the definition of elementary school under State law. State law at section 21-13-101(a)(iv) defines elementary school as "a school consisting of kindergarten through grade five..." As discussed above, the population payment is distributed based on the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction. It appears that under State law the children served by the DDD are not enrolled in elementary school. If you select this option, you should consult with your State Attorney General's office about how to include preschool-aged children within the State's definition of elementary school, including whether any statutory changes are necessary. You should note that, even with this change, the DDD will only be able to count elementary and secondary school children within its jurisdiction, which, as it is currently configured, is limited to the children it serves. As a result, DDD would receive a smaller percentage of the population payment than LEAs that include elementary and secondary schools. Poverty payments are not linked to elementary and secondary public and private school enrollment figures. Poverty payments must be made to eligible agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency. The poverty factor chosen by the SEA must be applied on a uniform basis across all eligible agencies. See 34 CFR §301.31(c)(2) and (3). Because DDD is an eligible subgrantee, DDD should be included in the State's distribution procedures for poverty payments.

Under section 619(d)(1) of IDEA, States may retain funds for State-level activities up to an amount equal to 25 percent of the amount they received for FFY 1997 under the Preschool grants program, adjusted upward each year by the lesser of the percentage increase, if any, in the State's allocation or the rate of inflation. Funds that are used for State-level activities are not required to be distributed to LEAs based on the formula described above. The remaining section 619 funds (funds that are not retained for State-level activities) must be distributed to LEAs based on the formula in 34 CFR §301.31. Under current Wyoming law, 95% of section 619 funds must be distributed to LEAs. Only 5% of section 619 funds are retained for State-level activities. As noted above, this provision of the law must be amended to make it consistent with IDEA 97. If when it amends the law, Wyoming chooses to retain the maximum amount possible for State-level activities, the State would have a larger amount of State set-aside funds than it does under the current State law. Because the State has discretion to determine the manner in which its State set-aside funds are allocated, it could provide its section 619 or section 611 State set-aside funds to the DDD.

Under the new formula for allocating section 619 and section 611 funds to LEAs, regardless of which of the above options you select, school districts will likely continue to receive disproportionately more funds than the DDD. Therefore, another solution may be to shift responsibility for providing services to preschool children with disabilities to the school districts. A school district that receives section 619 and section 611 funds could then contract with the DDD or the regional preschool centers to provide the services.

Finally, in the August 11, 1999 letter and in the meeting, you stated that FFY 1998 Section 619 funds were allocated on a child count basis in accordance with State statute, Article 7, section 21-2-705, rather than the IDEA 97 formula requirements. We appreciate your willingness to work with OSEP to resolve this error. Wyoming must make appropriate adjustments to the federal fiscal year 1998 Preschool grant allocations to ensure that each eligible entity receives the amount of Preschool grant funds to which it was entitled in FFY 1998 under section 619(g). Therefore, Wyoming must calculate the amount of section 619 funds each eligible entity was entitled to receive in FFY 1998 based on the formula in 34 CFR 301.30-301.32 discussed above and determine what, if any, adjustments need to be made. In order to minimize any disruptions, Wyoming may make adjustments for FFY 1998 funds any time before September 30, 2000 (the date when FFY 1998 funds expire under the Tydings Amendment). Wyoming may use any available FFY 1998 or 1999 carry over funds or make upwards or downwards adjustments to the eligible entity's FFY 2000 subgrant (assuming allocation to LEAs are made by September 30, 2000). In order to assist you, we have attached a chart that describes how Wyoming's FFY 1998 award was calculated including the maximum set-aside amount and the amount that must be flowed through to LEAs.

Please contact the OSEP Wyoming State contact, Ms. Claudia Brewster at (202) 205-5578; the Preschool Grants Coordinator, Ms. Nancy Treusch, at (202) 205-9097; or Ms. JoLeta Reynolds at (202) 205-5507 if you need further assistance with this process.

We look forward to working with you in the near future.

Sincerely,



Kenneth R. Warlick

Director

Office of Special Education Programs

Enclosure