



Monday
June 1, 1998

Part XVII

**Department of
Education**

**34 CFR Part 301
Preschool Grants for Children with
Disabilities; Final Rule**

DEPARTMENT OF EDUCATION

34 CFR Part 301

RIN 1820-AB47

Preschool Grants for Children with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Preschool Grants for Children with Disabilities program. These provisions would affect the allocation of funds to States and local educational agencies (LEAs). These amendments are needed to implement changes recently enacted by the Individuals with Disabilities Education Act Amendments of 1997 (IDEA Amendments of 1997).

EFFECTIVE DATE: These regulations will take effect on July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Irvin or JoLeta Reynolds, U.S. Department of Education, 600 Independence Avenue, SW., Mary E. Switzer Building, Room 3090, Washington, DC 20202. Telephone: (202) 205-5507. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5465.

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SUPPLEMENTARY INFORMATION: The Preschool Grants for Children with Disabilities program under section 619 of Part B of the Individuals with Disabilities Education Act (Act) provides additional Federal financial assistance to States for providing special education and related services to children with disabilities aged three through five years, and, at a State's discretion, to two-year-old children with disabilities who will turn three during the school year. The Preschool Grants for Children with Disabilities regulations in 34 CFR part 301 establish the administrative procedures for applying for and distributing Preschool Grants funds.

The IDEA Amendments of 1997 made significant changes in how preschool grant funds are distributed to States and LEAs. These changes will apply to preschool grant funds that will become available on July 1, 1998. Each State must distribute any funds that it does

not retain for administration and other State-level activities to LEAs in accordance with the new formula set out in § 301.31. Under this formula, the State must first award each LEA the amount it would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its preschool grant. Even if a State distributed 90 percent of its preschool grant to LEAs for fiscal year 1997, the base payment must be calculated as if the State had distributed 75 percent of its preschool grant. The regulations clarify that States also must provide new or reconfigured LEAs, including charter schools that meet the definition of a LEA in section 602 of the IDEA, part of this base payment based on the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs. Each State must distribute to LEAs any flow-through funds remaining after the base awards are made on the basis of public and private elementary and secondary school enrollment (85 percent of the remaining funds) and the relative number of children living in poverty (15 percent of the remaining funds). A State also may choose to distribute funds it has set aside to LEAs for activities specified in § 301.26.

In order to calculate the base payment, the State must know the final amount of its fiscal year 1997 award. However, because of potential changes in funding due to downward revisions in State child counts resulting in the redistribution of these funds, the final fiscal year 1997 grant award may not be known until September 1998. A State should calculate the base payments to LEAs based on the State's fiscal year 1997 award that became available on July 1, 1997, plus or minus any adjustments as of the time of the State's allocation to LEAs. States must make adjustments to the base payments to LEAs when the State's final 1997 award amount is determined, if that amount is different from the award on which the initial allocations to the LEAs were based.

A State may choose to distribute the funds it has set aside under § 301.24 for other State-level activities to LEAs for direct services or other activities specified in § 301.26. It is important to note that funds retained under § 301.24 for other State-level activities do not need to be distributed to LEAs, or if some funds are distributed to LEAs, the SEA is not required to do so according to the formula in § 301.31. States have the discretion to determine how any set aside funds allocated to LEAs will be distributed. States are advised to

separately identify for each LEA the amount that is the base payment, the amount distributed based on enrollment and poverty and, if applicable, any State set aside money the State may have distributed to the LEA. This would enable interested parties to determine how the subgrant was calculated.

The substantive rights and protections established under Part B of the Act and its implementing regulations at 34 CFR part 300 apply to three through five year old children with disabilities and to two-year-old children, if they are served under this program. Therefore these rights and protections, which include the right to a free appropriate public education, placement in the least restrictive environment, and the availability of due process procedures, are not repeated in the part 301 regulations.

These final regulations implement the changes made to section 619 of part B of the Act by the IDEA Amendments of 1997.

On October 22, 1997, the Secretary published a notice of proposed rulemaking (NPRM) for this program in the **Federal Register**. In the preamble to the NPRM, the Secretary discussed on pages 55052 and 55053 the changes proposed in that document to conform the regulations for the Preschool Grants for Children with Disabilities program with the provisions of the IDEA Amendments of 1997.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM several parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

General

Section 301.5(a) is removed. The definitions of Educational service agency, Local educational agency, and State educational agency are contained in 34 CFR part 300. As § 301.4(c) states, the regulations in 34 CFR part 300 apply to 34 CFR part 301—Preschool Grants for Children with Disabilities. The Department will consider whether these definitions need further clarification in the context of developing final regulations for 34 CFR part 300.

Use of State Agency Allocations (§ 301.26)

Comment: A number of commenters requested that notes be deleted from the regulations implementing Part B of IDEA.

Discussion: The note following this section in the NPRM explains that the IDEA Amendments of 1997 made a number of changes to the Act designed to encourage better coordination of services among programs, including flexibility for States to use State administration funds under section 619(e) of the Act to coordinate activities with other programs that provide services to children with disabilities and to fund administrative costs related to Part C of the Act. The note indicates that, consistent with the intent of these provisions, an example of an authorized activity under paragraph (a) would be to plan and develop a statewide comprehensive delivery system for children with disabilities aged birth through five. The activities mentioned in the note continue to be allowable expenditures but to eliminate unnecessary language, the note would be removed.

Change: The note will be removed.

Allocations to Local Educational Agencies (§ 301.31)

Comment: A few commenters noted that § 301.31(a) refers to § 301.27, but that the proposed regulations do not include a § 301.27.

Discussion: A typographical error was made in the NPRM. The reference in § 301.31(a) should be to § 301.30, rather than § 310.27.

Change: The regulatory citation in the § 301.31(a) has been changed to § 301.30.

Comment: A number of commenters raised the issue of whether charter schools or LEAs not in existence during fiscal year 1997 would be eligible for a base payment under § 301.31(a) and, if so, how such payments should be calculated.

Discussion: The regulations should be revised to ensure that charter schools established under State law as LEAs and LEAs not in existence during fiscal year 1997 are not excluded from receiving a base payment. In addition, if the boundaries of LEAs that were in existence or administrative responsibility for providing services to children with disabilities ages 3 through 5 are changed, adjustments to their base payments of the affected LEAs also would be made. For example, a change in administrative responsibility might encompass a change in the age range for which an LEA is responsible for

providing services such as where responsibility for serving 3 and 4 year olds is transferred from one LEA to another. These adjustments will ensure that affected LEAs equitably share in their base payments. The base amount for new and previously existing LEAs, once recalculated, becomes the new base payment for the LEAs. These base payments would not change unless the payments subsequently need to be recalculated pursuant to § 301.31.

Change: A new paragraph (b) has been added to § 301.31 to clarify that, if LEAs are created, combined, or otherwise reconfigured subsequent to fiscal year 1997, the State would be required to provide the LEAs involved with revised base allocations calculated on the basis of the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs.

Comment: One commenter requested that the language in the note following this section of the NPRM be incorporated into the regulations.

Discussion: The language in the note that States should use the best data available on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty has been incorporated into the regulations. The number of children enrolled in public and private elementary and secondary schools includes the number of disabled and nondisabled children. If data on enrollment in private schools are not available, States or LEAs are not required to initiate new data collections to obtain this data. However, States are encouraged to try to obtain enrollment data from private schools.

States have discretion in determining what data to use to allocate funds among LEAs on the basis of children living in poverty. States should use the best data available to them that reflect the distribution of children living in poverty. Examples of options include census poverty data, aggregate data on children in families receiving assistance under the State program funded under Part A of title IV of the Social Security Act, aggregate data on children participating in the free or reduced-price meals program under the National School Lunch Act, and allocations under title I of the Elementary and Secondary Education Act.

In order to be fair to all LEAs the data used by the State to determine enrollment and numbers of children living in poverty would need to be the same across the State.

Change: A new paragraph (c)(3) has been added to § 301.31 stating that for

the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty. The note will be deleted.

Comment: One commenter requested clarification regarding whether children who are home schooled are to be included in determining public and private school enrollment.

Discussion: If a State recognizes home schools as private schools, and the State is collecting data on private school enrollments, then students educated in home schools may be included in the State's calculation of private school enrollment.

Change: None.

Major Changes in the Regulations

The following is a summary of the major substantive changes in these final regulations:

- A new paragraph (b) has been added to § 301.31 to clarify that, if LEAs are created, combined, or otherwise reconfigured subsequent to fiscal year 1997, the State would be required to provide the LEAs involved with revised base payments, that would be calculated on the basis of the relative numbers of children with disabilities ages three through five currently provided special education by each of the affected LEAs.

- A new paragraph (c)(3) has been added to § 301.31 stating that for the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These final regulations address the National Education Goal that all children in America will start school ready to learn.

Executive Order 12866

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the

order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, were identified and explained in the preamble to the NPRM.

Regulatory Flexibility Act

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities and there has not been public comment challenging that conclusion or other information that would change the Department's decision.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB Control number assigned to the collections of information in these final regulations are displayed at the end to the affected sections of the regulations.

Section 301.10 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of this section to the Office of Management and Budget for its review. OMB has approved this submission with OMB control no. 1820-0030.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the NPRM and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219-1511 or, toll free, 1-800-222-4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR part 301

Education of individuals with disabilities, Elementary and Secondary education, Grant programs—education, Infants and children, Reporting and recordkeeping requirements.

Dated: May 20, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number: 84.173 Preschool Grants for Children with Disabilities)

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 301 as follows:

PART 301—PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.

- 301.1 Purpose of the Preschool Grants for Children With Disabilities Program.
- 301.2—301.3 [Reserved]
- 301.4 Applicable regulations.
- 301.5 Applicable definitions.
- 301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Subpart B—State Eligibility for a Grant.

- 301.10 Eligibility of a State to receive a grant.
- 301.11 [Reserved]
- 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

Subpart C—Allocation of Funds to a State.

- 301.20 Allocation to States.
- 301.21 Increase in funds.
- 301.22 Limitation.
- 301.23 Decrease in funds.
- 301.24 State-level activities.
- 301.25 Use of funds for State administration.
- 301.26 Use of State agency allocations.

Subpart D—Allocation of Funds to Local Educational Agencies.

- 301.30 Subgrants to local educational agencies.
- 301.31 Allocations to local educational agencies.
- 301.32 Reallocation of local educational agency funds.

Authority: 20 U.S.C. 1419, unless otherwise noted.

Subpart A—General

§ 301.1 Purpose of the Preschool Grants for Children With Disabilities Program.

The purpose of the Preschool Grants for Children With Disabilities program (Preschool Grants program) is to provide grants to States to assist them in providing special education and related services—

- (a) To children with disabilities aged three through five years; and
- (b) At a State's discretion, to two-year-old children with disabilities who will turn three during the school year.

(Authority: 20 U.S.C. 1419(a))

§§ 301.2—301.3 [Reserved]

§ 301.4 Applicable regulations.

The following regulations apply to the Preschool Grants program:

(a) The Education Department General Administrative Regulations (EDGAR) in title 34 of the Code of Federal Regulations—

- (1) Part 76 (State-Administered Programs) except §§ 76.125–76.137 and 76.650–76.662;
- (2) Part 77 (Definitions that Apply to Department Regulations);
- (3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);
- (4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);
- (5) Part 81 (General Education Provision Act—Enforcement);
- (6) Part 82 (New Restrictions on Lobbying); and

(7) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 301.

(c) The regulations in 34 CFR part 300.

(Authority: 20 U.S.C. 1419)

§ 301.5 Applicable definitions.

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
EDGAR
Fiscal year
Grant period
Secretary
Subgrant

(b) *Other definitions.* The following definitions also apply to this part:

Act means the Individuals with Disabilities Education Act, as amended.
Part B child count means the child count required by section 611(d)(2) of the Act.

Preschool means the age range of 3 through 5 years.

State means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 1402, 1419)

§ 301.6 Applicability of Part C of the Act to two-year-old children with disabilities.

Part C of the Act does not apply to any child with disabilities receiving a free appropriate public education, in accordance with part B of the Act, with funds received under the Preschool Grants program.

(Authority: 20 U.S.C. 1419(h))

Subpart B—State Eligibility for a Grant.

§ 301.10 Eligibility of a State to receive a grant.

A State is eligible to receive a grant if—

(a) The State is eligible under 34 CFR part 300; and

(b) The State demonstrates to the satisfaction of the Secretary that it has in effect policies and procedures that assure the provision of a free appropriate public education—

(1) For all children with disabilities aged three through five years in accordance with the requirements in 34 CFR part 300; and

(2) For any two-year-old children, provided services by the SEA or by an LEA or ESA under § 301.1.

(Authority: 20 U.S.C. 1419 (a), (b))

(Approved by the Office of Management and Budget under control number 1820-0030)

§ 301.11 [Reserved]

§ 301.12 Sanctions if a State does not make a free appropriate public education available to all preschool children with disabilities.

If a State does not meet the requirements in section 619(b) of the Act—

(a) The State is not eligible for a grant under the Preschool Grant program;

(b) The State is not eligible for funds under 34 CFR part 300 for children with disabilities aged 3 through 5 years; and

(c) No SEA, LEA, ESA, or other public institution or agency within the State is eligible for a grant under Subpart 2 of part D of the Act if the grant relates exclusively to programs, projects, and activities pertaining to children with disabilities aged 3 through 5 years.

(Authority: 20 U.S.C. 1411(d)(2) and (e)(2)(B); 1419(b); 1461(j))

Subpart C—Allocation of Funds to States.

§ 301.20 Allocations to States.

After reserving funds for studies and evaluations under section 674(e) of the Act, the Secretary allocates the remaining amount among the States in accordance with §§ 301.21–301.23.

(Authority: 20 U.S.C. 1419(c)(1))

§ 301.21 Increase in funds.

If the amount available for allocation to States under § 301.20 is equal to or greater than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) Except as provided in § 301.22, the Secretary—

(1) Allocates to each State the amount it received for fiscal year 1997;

(2) Allocates 85 percent of any remaining funds to States on the basis of their relative populations of children aged 3 through 5; and

(3) Allocates 15 percent of those remaining funds to States on the basis of their relative populations of children described in paragraph (a)(2) of this section who are living in poverty.

(b) For the purpose of making grants under this section, the Secretary uses the most recent population data, including data on children living in poverty, that are available and satisfactory to the Secretary.

(Authority: 20 U.S.C. 1419(c)(2)(A))

§ 301.22 Limitation.

(a) Notwithstanding § 301.21, allocations under that section are subject to the following:

(1) No State's allocation may be less than its allocation for the preceding fiscal year.

(2) No State's allocation may be less than the greatest of—

(i) The sum of—

(A) The amount it received for fiscal year 1997; and

(B) One-third of one percent of the amount by which the amount appropriated under section 619(j) of the Act exceeds the amount appropriated under section 619 of the Act for fiscal year 1997;

(ii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by the percentage by which the increase in the funds appropriated from the preceding fiscal year exceeds 1.5 percent; or

(iii) The sum of—

(A) The amount it received for the preceding fiscal year; and

(B) That amount multiplied by 90 percent of the percentage increase in the amount appropriated from the preceding fiscal year.

(b) Notwithstanding paragraph (a)(2) of this section, no State's allocation under § 301.21 may exceed the sum of—

(1) The amount it received for the preceding fiscal year; and

(2) That amount multiplied by the sum of 1.5 percent and the percentage increase in the amount appropriated.

(c) If the amount available for allocation to States under § 301.21 and paragraphs (a) and (b) of this section is insufficient to pay those allocations in full, the Secretary ratably reduces those allocations, subject to paragraph (a)(1) of this section.

(Authority: 20 U.S.C. 1419(c)(2)(B) and (C))

§ 301.23 Decrease in funds.

If the amount available for allocations to States under § 301.20 is less than the amount allocated to the States under section 619 of the Act for the preceding fiscal year, those allocations are calculated as follows:

(a) If the amount available for allocations is greater than the amount allocated to the States for fiscal year 1997, each State is allocated the sum of—

(1) The amount it received for fiscal year 1997; and

(2) An amount that bears the same relation to any remaining funds as the increase the State received for the preceding fiscal year over fiscal year 1997 bears to the total of those increases for all States.

(b)(1) If the amount available for allocations is equal to the amount allocated to the States for fiscal year 1997, each State is allocated the amount it received for that year.

(2) If the amount available is less than the amount allocated to States for fiscal

year 1997, the Secretary allocates amounts equal to the allocations for fiscal year 1997, ratably reduced.

(Authority: 20 U.S.C. 1419(c)(3))

§ 301.24 State-level activities.

(a) Each State may retain not more than the amount described in paragraph (b) of this section for administration and other State-level activities in accordance with §§ 301.25 and 301.26.

(b) For each fiscal year, the Secretary determines and reports to the SEA an amount that is 25 percent of the amount the State received under section 619 of the Act for fiscal year 1997, cumulatively adjusted by the Secretary for each succeeding fiscal year by the lesser of—

(1) The percentage increase, if any, from the preceding fiscal year in the State's allocation under section 619 of the Act; or

(2) The rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

(Authority: 20 U.S.C. 1419(d))

§ 301.25 Use of funds for State administration.

(a) For the purpose of administering section 619 of the Act (including the coordination of activities under Part B of the Act with, and providing technical assistance to, other programs that provide services to children with disabilities), each State may use not more than twenty percent of the maximum amount it may retain under § 301.24 for any fiscal year.

(b) Funds described in paragraph (a) of this section may also be used for the administration of Part C of the Act, if the SEA is the lead agency for the State under that part.

(Authority: 20 U.S.C. 1419(e))

§ 301.26 Use of State agency allocations.

Each State shall use any funds it retains under § 301.24 and does not use for administration under § 301.25 for any of the following:

(a) Support services (including establishing and implementing the mediation process required by section 615(e) of the Act), which may benefit children with disabilities younger than 3 or older than 5 as long as those services also benefit children with disabilities aged 3 through 5.

(b) Direct services for children eligible for services under section 619 of the Act.

(c) Developing a State improvement plan under subpart 1 of Part D of the Act.

(d) Activities at the State and local levels to meet the performance goals established by the State under section 612(a)(16) of the Act and to support implementation of the State improvement plan under subpart 1 of Part D of the Act if the State receives funds under that subpart.

(e) Supplementing other funds used to develop and implement a Statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families, but not to exceed one percent of the amount received by the State under section 619 of the Act for a fiscal year.

(Authority: 20 U.S.C. 1419(f))

Subpart D—Allocation of funds to local educational agencies.

§ 301.30 Subgrants to local educational agencies.

Each State that receives a grant under section 619 of the Act for any fiscal year shall distribute any funds it does not retain under § 301.24 to local educational agencies in the State that have established their eligibility under section 613 of the Act.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.31 Allocations to local educational agencies.

(a) *Base payments.* The State shall first award each agency described in § 301.30 the amount that agency would have received under section 619 of the Act for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect.

(b) *Base payment adjustments.* For fiscal year 1998 and beyond—

(1) If a new LEA is created, the State shall divide the base allocation determined under paragraph (a) of this section for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each of the LEAs;

(2) If one or more LEAs are combined into a single new LEA, the State shall combine the base allocations of the merged LEAs; and

(3) If for two or more LEAs, geographic boundaries or administrative responsibility for providing services to children with disabilities ages 3 through 5 changes, the base allocations of affected LEAs shall be redistributed

among affected LEAs based on the relative numbers of children with disabilities ages 3 through 5 currently provided special education by each affected LEA.

(c) *Allocation of remaining funds.* After making allocations under paragraph (a) of this section, the State shall—

(1) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and

(2) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

(3) For the purpose of making grants under this section, States must apply on a uniform basis across all LEAs the best data that are available to them on the numbers of children enrolled in public and private elementary and secondary schools and the numbers of children living in poverty.

(Authority: 20 U.S.C. 1419(g)(1))

§ 301.32 Reallocation of local education agency funds.

(a) If a SEA determines that an LEA is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the SEA may reallocate any portion of the funds under section 619 of the Act that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.

(b) If a State provides services to preschool children with disabilities because some or all LEAs and ESAs are unable or unwilling to provide appropriate programs, the SEA may use payments that would have been available to those LEAs or ESAs to provide special education and related services to children with disabilities aged 3 through 5 years, and to two-year-old children with disabilities receiving services consistent with § 301.1 who are residing in the area served by those LEAs and ESAs.

(Authority: 20 U.S.C. 1414(d), 1419(g)(2))

[FR Doc. 98-14508 Filed 5-29-98; 8:45 am]

BILLING CODE 4000-01-P