

Example 1 of paragraph 1 the LEA had received from the Federal FY-2 appropriation, a section 611(g) subgrant that was \$20,000 greater than the subgrant it received from the Federal FY-1 appropriation, then up to \$4,000 of that subgrant could be treated as local funds. The LEA, however, would have to spend at least \$4,000 of its Federal FY-2 section 611(g) subgrant during its FY-2 in order for those funds to count as part of its local expenditures for that year for purposes of § 300.231.

In this example, if the LEA had carried over all of its Federal FY-2 section 611(g) subgrant to the LEA's FY-3 (and thus did not spend any of those funds during its FY-2), then none of the section 611(g) subgrant funds subject to the 20 percent rule could be considered as local funds for purposes of determining compliance with § 300.231. (The reason for this is that auditors, in determining an LEA's compliance with § 300.231, examine State and local, or local funds the LEA actually spent on special education and related services, and *not* those funds that the LEA could, but did not, spend for those purposes.)

If the LEA, in its FY-2, spent \$4,000 of its Federal FY-2 section 611(g) subgrant, then the LEA could count those expenditures and bring itself into compliance with § 300.231 (i.e., \$996,000 of the LEA's own local funds spent on special education and related services plus the \$4,000 of Federal FY-2 section 611(g) funds that can be counted as local funds equals a total of \$1,000,000 of local expenditures on special education in its FY-2—the amount of local expenditures needed to comply with § 300.231). However, if the LEA elected to take this step, it could not count any of the Federal FY-2 section 611(g) subgrant funds that it will spend in its FY-3 as local funds.

If the LEA, in its FY-2, spent only \$3,000 of its Federal FY-2 section 611(g) subgrant funds, then those funds could be counted by the LEA as local funds in calculating its compliance with § 300.231 for its FY-2. If the remaining \$1,000 of Federal FY-2 funds available to be considered local funds were spent in the LEA's FY-3, those funds could be considered in determining the LEA's compliance with § 300.231 for its FY-3. (Note, However, that if in its FY-2 the LEA had only spent \$996,000 of local funds and \$3,000 of its Federal funds, it would not have met the requirements of § 300.231. In this case the auditor would have \$1,000 of questioned costs (\$1,000,000 - [\$996,000 + \$3,000] = \$1,000) for FY-2).

[66 FR 1476, Jan. 8, 2001]

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 2-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—Allocations of Funds to States

301.20 Allocations 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.

SOURCE: 63 FR 29930, June 1, 1998, 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

§§ 301.2–301.3

34 CFR Ch. III (7–1–02 Edition)

(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))

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

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

§§ 301.2–301.3 [Reserved]

§ 301.6 Applicability of part C of the Act to 2-year-old children with disabilities.

§ 301.4 Applicable regulations.

The following regulations apply to the Preschool Grants program:

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))

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

Subpart B—State Eligibility for a Grant

(1) Part 76 (State-Administered Programs) except §§ 76.125–76.137 and 76.650–76.662;

§ 301.10 Eligibility of a State to receive a grant.

(2) Part 77 (Definitions that Apply to Department Regulations);

A State is eligible to receive a grant if—

(3) Part 79 (Intergovernmental Review of Department of Education Programs and Activities);

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

(4) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments);

(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—

(5) Part 81 (General Education Provision Act—Enforcement);

(1) For all children with disabilities aged 3 through 5 years in accordance with the requirements in 34 CFR part 300; and

(6) Part 82 (New Restrictions on Lobbying); and

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

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

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

(b) The regulations in this part 301.

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

(c) The regulations in 34 CFR part 300.

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

§ 301.5 Applicable definitions.

§ 301.11 [Reserved]

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

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

Applicant	Fiscal year
Application	Grant period
Award	Secretary
EDGAR	Subgrant

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

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

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

Act means the Individuals with Disabilities Education Act, as amended.

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

Part B child count means the child count required by section 611(d)(2) of the Act.

(c) No SEA, LEA, ESA, or other public institution or agency within the

Preschool means the age range of 3 through 5 years.

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

§ 301.24

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

34 CFR Ch. III (7–1–02 Edition)

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 sec-

ondary 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 pre-school 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))

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Subpart A—General

PURPOSE, ELIGIBILITY, AND OTHER GENERAL PROVISIONS

Sec.

- 303.1 Purpose of the early intervention program for infants and toddlers with disabilities.
- 303.2 Eligible recipients of an award.
- 303.3 Activities that may be supported under this part.
- 303.4 Limitation on eligible children.
- 303.5 Applicable regulations.

DEFINITIONS

- 303.6 Act.
- 303.7 Children.