which student eligibility documentation could not be located.

Based on these two findings, the Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) issued a final determination on March 29, 1991, that concluded that salaries, fringe benefits, and indirect costs charged to the Chapter 1 program were unsupported or incorrectly calculated. The determination required a refund totaling \$762,338.

The SEA appealed the final determination of the Assistant Secretary through the Office of Administrative Law Judges. Review of additional documentation submitted during this period of appeal and negotiations between the school district and the Department resulted in an order of dismissal issued on April 15, 1992, by the Department settling the audit at \$210,000 in questioned costs. Subsequently, on June 4, 1992, the LEA submitted a check for \$210,000.

#### **B.** Authority for Awarding a Grantback

Section 459(a) of GEPA, 20 U.S.C. 1234h(a), provides that whenever the Secretary has recovered program funds following a final audit determination, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by the determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this grantback arrangement if the Secretary determines that—

(1) Practices or procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

### C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 459(a)(2) of GEPA, the SEA has applied for a grantback of \$157,500—75 percent of the principal amount recovered by the Department and has submitted a plan on behalf of the LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1, ESEA (20 U.S.C. 2701 *et seq.* (1988)).

According to the plan, the LEA will use the grantback funds under Chapter 1 to provide six weeks of summer kindergarten to be held at eight schoolwide project sites, two classes per site for a total of 16 classrooms. Participating teachers will attend one planning meeting (2 hours) and a full day of staff development (5 hours) in June in preparation for the program that will begin for students on July 5 and end on August 15, 1995. The participating schools will be selected based on the following two factors: (1) A high concentration of students about to enter first grade who have not had a kindergarten experience, and (2) a high concentration of poverty. The Office of Accountability and Assessment will identify the targeted schools. If space is available, children who entered kindergarten after January 1995 will also be included. Teachers and classroom assistants will telephone parents to keep attendance high.

Each class will be staffed by a teacher and a classroom assistant. The teacherstudent ratio will be one to fifteen. The standardized kindergarten curriculum for the LEA will be used as the basis for instruction. Schools will be invited to pilot some special materials to increase hands-on interactive, developmentally appropriate instruction. These materials will be selected by the principal and teachers at the school to coordinate with the instructional model in use at the school. For the sixth week, the first grade teachers to whom the students have been assigned will attend and work with the students. The Early Primary Progress Report (EPPR), a developmentally appropriate kindergarten checklist, will be administered to each participant at the completion of the summer program. Children will be rated as competent, making progress, or making improvement. The results will be summarized to determine attainment of objectives for each class and the program as a whole.

Also, the LEA staff, in consultation with nonpublic school authorities and parents of Chapter 1 students, decided to allocate grantback funds to support summer professional development for 20 teachers of Chapter 1 students, in order to provide these teachers with an opportunity to focus on the needs of the Chapter 1 children they teach and to align the regular education program with Chapter 1 support activities in their schools. Twenty nonpublic schools with the highest concentrations of Chapter 1 program students will be selected for participation. Attendance will be recorded at each staff development session and participating teachers will complete a workshop evaluation survey at the end of the twoweek session.

#### **D.** The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 459 of GEPA have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary may take appropriate administrative action. In finding that the conditions of section 459 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

# E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 459(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which payment will be made.

In accordance with section 459(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the SEA under a grantback arrangement. The grantback award would be in the amount of \$157,500.

## F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1995, in accordance with section 459(c) of GEPA and the SEA's plan.