



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

NOV 6 1997

Mr. Richard D. Teagarden  
Superintendent  
Mr. Dan Halcomb  
Assistant Superintendent  
Yuba County Office of Education  
938 14th Street  
Marysville, California 95901-4198

Dear Messrs. Teagarden and Halcomb:

President Clinton and Secretary Riley have asked me to respond to your letters to them of May 12, 1997. In your letter, you asked we "promulgate federal regulations which would clarify that state prisons are not required provide special education to adult inmates pursuant to the individuals with Disabilities Education Act [(IDEA)]."

Part B of the IDEA and its implementing regulations have consistently required that a free appropriate public education be available to all eligible children with disabilities, including eligible youth with disabilities in State-adult correctional facilities. This requirement has been included in the regulations under the IDEA, and its predecessor, the Education of the Handicapped Act, since 1975. Federal courts have been enforcing this requirement since 1981. Green v. Johnson, 513 F. Supp. 965, 976 (D.Mass. 1981); see also Donnell C. v. Ill. State Bd. of Educ., 829 F. Supp. 1016, 1020 (N.D.Ill. 1993); and Alexander S. v. Boyd, 876 F. Supp. 773, 800-801 (D.S.C. 1995).

On June 4, 1997, the President signed the IDEA Amendments of 1997. That legislation includes a number of provisions regarding special education services for youth with disabilities in adult prisons, which reflect careful and extensive consideration of the issue by the Congress. These changes to IDEA once again make it clear that all States must serve eligible youth with disabilities in adult correctional facilities, but provide States significant flexibility in serving incarcerated youth.

For example, States need only make available special education services to youth with disabilities, aged 18 through 21, who, in the educational placement prior to their incarceration in an adult correctional facility: (a) were actually identified as being a child with a disability under the IDEA; or (b) had an individualized education program under the IDEA. The new law also provides that youth with disabilities who are convicted as adults and in adult prisons need not participate in general testing programs conducted by the State, and that the provisions requiring

transition services to promote movement from school to employment and other post-school activities do not apply to individuals in adult prisons whose eligibility under the IDEA will end because of their age, before they will be released from prison.

Most importantly, the educational program and placement of eligible youth with disabilities who are convicted as adults and in adult prisons can be modified if the State shows bona fide security or compelling penological interests that cannot otherwise be accommodated. This provision allows a team of professionals to address these issues on a case-by-case basis, and to respond to extreme circumstances, such as where a youth with disabilities poses an immediate threat to self or others, by making appropriate modifications or limitations to the educational program or placement, including suspension of services for an appropriate period of time. The Department has recently published proposed regulations under the IDEA, which are consistent with the requirements of the statute, as outlined above. A copy of the proposed regulations is enclosed.

The Department believes that providing special education to incarcerated youth with disabilities is good public policy. In California, a majority of incarcerated youth ages 21 or younger are serving sentences of 4 years or less. These young people will be released back into society within a relatively short period of time. The majority of the studies that have looked at the benefits of prison education programs have shown that education has a positive effect on reducing recidivism and a positive effect on post-release employment success.

This is hardly surprising in light of the fact that nationwide, the literacy of prisoners is very, very low. About one-third of prisoners are unable to perform such simple job-related tasks as locating an intersection on a street map, or identifying and entering basic background information on an application. Another one-third are unable to perform slightly more difficult tasks such as writing an explanation of a billing error or entering information into an automobile maintenance form. Only about one in twenty can do things such as use a schedule to determine which bus to take. Young prisoners with disabilities are among the least likely to have the skills they need to be able to hold a job. For them, education is probably the only opportunity they have to become productive, independent members of society.

I also want to clarify that this Department has not threatened the State with loss of its entire grant under Part B of IDEA. The intent of this Department is, and has consistently been, to enforce the requirements of the IDEA, while ensuring continued funding for special education services for all eligible children and youth with disabilities in California. Indeed, on July 16, 1991, the Department awarded to the State its full 1997 federal fiscal year grants under Part B and Section 619 of the IDEA.

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I hope that this letter clarifies the position of the Department on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir  
Director  
Office of Special Education Programs

Enclosure