



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT - 7 1998

Daniel Kinley
Interim Executive Director
New York State School Boards Association
The Dodge Building
119 Washington Avenue
Albany, New York 12210-2292

Dear Mr. Kinley:

This is in response to your letter dated July 2, 1998, written to OSERS Assistant Secretary Judith E. Heumann, on behalf of the membership of the New York State School Boards Association (NYSBA), regarding publication of final regulations necessary to implement the reauthorization of the Individuals with Disabilities Education Act (IDEA) by the IDEA Amendments of 1997, Pub. L. 105-17, (IDEA '97). Please excuse the delay in issuing this response.

As a condition for receipt of its FY 1998 Part B grant award, the New York State Education Department (NYSED) provided an assurance that it would comply with the requirements of the amended Federal law and all State policies and procedures previously approved under the IDEA that are not inconsistent with the IDEA Amendments Act of 1997 (IDEA '97). Accordingly, the Part B funding received on July 1 was based on the assurance by NYSED that New York and its local entities will operate consistent with the Federal statute. Members of my staff will continue to be available to provide technical assistance to NYSED to ensure that the State's laws and regulations conform to the requirements of IDEA '97 without undue delay.

As you indicate, we are aware that your legislature failed to pass legislation advanced by NYSED that would conform your State statute to the requirements of IDEA '97 regarding individualized education program (IEP) team membership and IEP development. The legislature's refusal to pass the needed legislation apparently was attributed, at least in part, to the fact that final regulations implementing IDEA '97 had yet to be issued.

We are also deeply concerned that the NYSED attempts to revise your State's special education funding formula have been unsuccessful. In a March 4, 1998 letter to Mr. Larry Gloeckler, Deputy Commissioner, supporting NYSED's efforts in this regard, the Office of Special Education Programs (OSEP) cited the State's noncompliance with IDEA requirements concerning placement of children in the least restrictive environment and noted the new requirement at section 612(a)(5)(B), which requires that if a State uses a funding mechanism that distributes State funds on the basis of the type of setting in which a child is served, the

State ensures that the funding mechanism does not result in placements that violate IDEA requirements relative to placement in the least restrictive environment. At that time, OSEP reiterated its concerns with regard to New York's longstanding noncompliance with the least restrictive environment requirements, and emphasized that passage of your special education funding formula proposal is crucial to New York's continued eligibility for assistance under the Act. In discussions with Mr. Gloeckler, we were informed that the NYSED is taking steps to ensure that your State will comply with this requirement.

We appreciate NYSBA's continued commitment to the education of children with disabilities and your support for the efforts of NYSED to bring State law into compliance with Federal requirements. We understand your concern that final regulations will play an important role in resolving uncertainty about how to proceed in certain areas addressed by IDEA '97. I assure you that we are making every effort to publish final regulations as quickly as possible. If you have further questions, please contact Dr. JoLeta Reynolds or, Ms. Rhonda Weiss in the Office of Special Education Programs at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Mr. Lawrence Gloeckler
New York State
Education Department