



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

OCT 25 2005

Dr. Melody Bounds, Bureau Director
Program Improvement and Outreach
Mississippi State Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0771

Dear Dr. Bounds:

Thank you for your communications regarding Mississippi's educational challenges in the wake of Hurricane Katrina. We have reviewed the specific questions and requests you outlined in recent conference calls with the Office of Special Education Programs (OSEP) staff, and I am pleased to respond. Additional responses to requests for flexibility are included in Secretary Spellings' letter of September 21, 2005 to Texas Commissioner of Education Shirley Neeley, and her letter of September 21, 2005 to Louisiana Superintendent of Education Cecil J. Picard (copies enclosed).

We understand that Mississippi is making every effort to get displaced children back in school and to provide needed special education and related services as quickly as possible. For children already identified as eligible for special education, we expect that your office will assist districts in obtaining existing student records from the State's databases whenever possible, and that Individualized Education Programs (IEPs) will be developed and implemented in a timely way for those children.

The questions you posed in your September 7, 2005 conference call that included Paulette White, Ellen Burnham, Cynthia Bryant, and Larry Ringer fall into three general categories: IEP issues, funding issues, and program issues (waivers).

IEP Issues:

The Individuals with Disabilities Education Act (IDEA) addresses the issue of children transferring from district to district within the same State, as well as children transferring to a new school district in a different State.

The IDEA contains specific language regarding what is required for students who have transferred to another school district. See section 614(d)(2)(C). This provision requires the new district to provide services comparable to those in the previous district's IEP (which presumes that the new district has access to the previous IEP) and requires districts to take reasonable steps to promptly obtain a child's records and to respond to those requests for records. For children whose previous IEPs are not immediately available but who are believed to have a disability and be in need of special education and related services, a temporary IEP can be developed with the agreement of the parent. If the parent does not agree, the child should be enrolled in the regular

school program until appropriate evaluations and eligibility determinations have been made, unless the parent and the school district personnel agree on some other arrangement.

Funding Issues:

Consistent with the enclosed letters from Secretary Spellings, we will waive the IDEA State-level maintenance of effort requirement, as permitted under Section 612(a)(18)(c) of the Act. Secretary Spellings also notes in the enclosed letters that we are not authorized to waive allocation formulas to States, school districts, or other recipients.

Program Issues (Waivers):

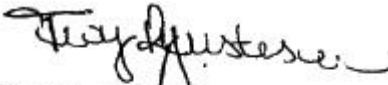
Your third category of request involved a free appropriate public education (FAPE), least restrictive environment (LRE), individual rights (including due process), and disproportionality (temporary suspension of requirements). The U.S. Department of Education currently has no authority to waive any of these program requirements.

The Department is requesting a broad waiver authority that would enable the Secretary, on a case-by-case basis, to waive or modify certain provisions of Federal law. The Department is not, however, seeking to waive civil rights protections in Federal law. As soon as we have additional information regarding our waiver request, we will be in touch with you to discuss how that authority may be used to address your needs.

In addition, in light of the unforeseen consequences of Hurricanes Katrina and Rita, and in order to ensure an orderly transition to the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. No. 108-446) (the Act), the Secretary is exercising her transition authority under section 303 of the Act to extend the submission date for State Performance Plans (SPPs) under section 616(b)(1)(A) of the Act for 60 days for the States with respect to which the President has declared that a hurricane disaster exists because of Hurricanes Katrina or Rita. Therefore, we are extending the due date for submission of your State's SPPs until January 30, 2006.

We appreciate the work you are doing to support families disrupted by Hurricane Katrina. Be assured that we will continue to work with you and your staff in the days ahead as you adjust to meet the needs of children with disabilities. Please feel free to contact Cynthia Bryant at 202-245-7284 for any additional follow-up or assistance.

Sincerely,


Troy R. Justesen
Acting Director
Office of Special Education
Programs

Enclosures