



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Ms. Leslie Fausset  
Chief Deputy Superintendent  
Policy and Programs  
California Department of Education  
721 Capitol Mall  
Sacramento, California 95814

DEC 3 1999

Dear Leslie:

For more than a decade, the California Department of Education's (CDE) on-going failure to meet its general supervisory responsibility under the Individuals with Disabilities Education Act (IDEA) has resulted in thousands of children with disabilities not receiving the most basic services to which they are entitled. In its May 1999 status report to us, CDE reported that thousands of students in San Diego, San Francisco, and Los Angeles had no current individualized education program (IEP) or no current reevaluation. In San Francisco alone, hundreds of students were not receiving all of the special education and/or related services that they needed and to which they were entitled. It is in the context of this long-standing failure in general supervision, its devastating effect on services to many children with disabilities, and the failure of previous CDE corrective action efforts, that we must evaluate CDE's proposals to determine whether they are likely to result in timely and effective correction.

The materials that CDE provided to us on May 21, and September 21, 1999 describe some of the procedures that CDE proposes to use to improve results for children with disabilities in approximately five percent of the State's school districts. We recognize the importance of such efforts to improve results, but, given the State's serious and long-standing noncompliance, we cannot approve a corrective action plan that clearly does not show how CDE will ensure prompt, *state-wide* correction of the many previously identified violations. CDE has asserted that the three-year, compliance agreement process that we have offered is neither necessary nor appropriate, because CDE can ensure and demonstrate full compliance within this grant award year. For that reason, on September 29, 1999, I sent you a list of questions, each of which was essential to our understanding of how CDE proposes to achieve state-wide correction within the grant award year, so that children with disabilities throughout the State can receive the special education and related services to meet their unique needs and prepare them for employment and independent living.

I am writing to express my deep concern and frustration with the response to my letter to you of September 29, 1999. Although the questions in my September 29, 1999 letter were clear and sought information that is critical to our understanding of, and response to, your proposal for achieving compliance, CDE's November 10, 1999 letter, which we received November 16, 1999, answered very few of my questions.

I am very troubled that the information provided with your November 10<sup>th</sup> letter failed to address many of CDE's most significant compliance problems. To date, CDE has not provided us with specific information on the steps that CDE has taken to ensure correction in such school districts as San Francisco, Los Angeles and San Diego, or documented any improvement in these districts since CDE's May 1999 status report to the Office of Special Education Programs (OSEP). Your November 10, 1999 letter ignores my questions regarding these districts and others with serious, long-standing noncompliance, and my requests for documentation of any specific actions CDE has taken to correct the previously identified noncompliance:

CDE's May 21 and September 21, 1999 submissions regarding its proposal for corrective action rely primarily upon CDE's new Quality Assurance Process (QAP), including focused monitoring. The November 10, 1999 attachment, while relying heavily upon the QAP, also indicates that the "Quality Assurance Process is not meant to be the only, nor the major tool [to ensure compliance]" and that CDE will also: (1) require school districts to complete a self-review on a four-year cycle, and (2) continue to participate in department-wide Coordinated Compliance Reviews (CCRs). However, neither your November 10, 1999 letter nor the attachment directly responds to our September 29, 1999 questions regarding how CDE will use the QAP, together with self-review, continued participation in CCRs, and other compliance tools to identify and correct noncompliance in a timely and effective manner. I also note that, as cited in OSEP's February 1992, February 1996 and April 1999 Monitoring Reports, the State's reliance on CCR historically has been ineffective at identifying and correcting noncompliance under the IDEA. Most recently, on page 7 of OSEP's April 1999 Report, we noted that:

CDE officials acknowledged that the current monitoring system was not effective in identifying all noncompliance. They explained that the Comprehensive Compliance Review system... severely limits the Special Education Division's ability to target its special education data collection... it is difficult to ensure that monitors have the training needed to probe beyond the yes-and-no questions.

As part of my September 29, 1999 questions we specifically asked whether CDE has modified CCR and, if so, how. CDE did not respond to those questions, either.

We believe that all of the questions in my September 29, 1999 letter are critical to our ability to evaluate CDE's proposal to come into compliance within the grant award year. We also believe that *CDE* needs clear answers in order to effectively plan and implement changes in its general supervisory activities that will enable the State to achieve compliance. In your November 10, 1999 submission, we found sufficient answers to questions I.A.3 and I.M. Also, this submission provided some information relevant to questions I.A.1, I.A.2, I.B.5, III.F.3 and III.F.4, but did not answer our questions. The submission did not provide any response to the remaining questions. Some of the questions in my September 29, 1999 letter are especially critical to our continuing effort to resolve these issues with you, and we must, therefore, receive your response to the issues raised above (primarily addressed in I.A.4, I.H, I.K, and III.A through III.G, inclusive) **no later than December 17, 1999**. I also must ask that we receive responses to all the remaining unanswered questions no later than December 31, 1999.

In addition to my concerns regarding CDE's response to my September 29, 1999 letter, I am also deeply concerned about CDE's failure to comply with the express special conditions on the State's August 19, 1999 fiscal year 1999 Part B grant award. The "Updated Corrective Action Plan" attached to your November 10, 1999 letter explains some of the changes that CDE has made and proposes to make in the procedures that it uses to resolve State special education complaints. However, CDE has failed to meet the special conditions that expressly required CDE to submit--no later than October 20, 1999--the first of four quarterly reports each of which must include specified data regarding the effectiveness of the changes that CDE has made to ensure timely resolution of complaints and to ensure the timely correction of noncompliance that CDE identifies in resolving complaints. On October 28, and November 1, 1999, Ms. Ellen Safranek of my staff contacted Dr. Parker's staff requesting this report. This report is now more than a month overdue and CDE is in violation of the specific requirements of the special conditions. It is important that we receive this quarterly report **no later than December 17, 1999**, and that we receive each of the three remaining quarterly reports no later than the dates on which they are due (i.e., January 20, April 20, and June 20, 2000).

We are prepared to work with you to cooperatively resolve the issue of CDE's failure to exercise its general supervisory responsibility effectively through a corrective action plan to achieve state-wide compliance within the current grant award year. In order to establish such a corrective action plan, we need the specific information requested in this letter (and previously described in my letter of September 29th). To date, CDE has failed to answer most of our basic factual questions--questions that go to the core of CDE's ability to identify and correct noncompliance in a timely manner. The lack of specific information undermines CDE's assertion that it is capable of demonstrating full compliance on these issues within the current grant award year and only serves to reinforce our previously held view that a compliance agreement is needed.

The Secretary and I know that Superintendent Eastin and you share our commitment to improving results for children with disabilities in California, and we remain, therefore, optimistic that we will be able to work together to resolve these issues. The Secretary and I hope that with your responses to the questions discussed in this letter and my letter of September 29, we will be able to get this process back on a proper track and finalize a plan that will ensure a free appropriate public education to eligible children with disabilities in California.

Sincerely,

Judith E. Heumann

cc: The Honorable Delaine Eastin  
Scott Hill  
Henry Der  
Alice Parker  
Loni Hancock