



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

**MAR 15 2000**

Mr. Cecil Picard  
State Superintendent of Education,  
Louisiana Department of Education  
P.O. Box 94064  
Baton Rouge, Louisiana 70804-9064

Dear Mr. Picard:

Your letter of September 14, 1999, written to President Clinton, has been referred to the U.S. Department (Department) of Education, Office of Special Education Programs (OSEP) for response. In your letter, you express your concerns regarding school safety and increased funding for special education.

I am pleased to respond to your inquiry and wish to take this opportunity to clarify the statutory provision regarding the 40 percent funding issue. IDEA 97 authorizes payments to assist States in carrying out their responsibilities. IDEA does not mandate funding at 40 percent of the excess costs of educating children with disabilities; rather, it establishes 40 percent of the average per pupil expenditures in public elementary and secondary schools in the United States as a maximum amount a State may receive under Part B. In other words, this provision establishes a ceiling on the amount of funding that may be provided to States.

This Administration continues to support consistent increases in federal funding of the IDEA. However, regardless of the level of federal funding available to States to assist with protecting children's constitutional right to a free appropriate public education, States should be taking advantage of all flexibility in establishing, and accessing existing, State and federal programs to support the cost of special education and related services.

In addition, your letter describes your understanding of the disciplinary provisions in the IDEA. You state that, "Educators continue to support a student's right to a FAPE; however, school officials require discretion and flexibility when determining whether a student's behavior is dangerous." You suggest that a decision to remove a disabled student who is a danger or potential danger to self or others, should be left to school officials, rather than requesting the ruling of a hearing officer."

The Department takes the view that it is critical for school officials and parents to respond promptly to signs of misconduct when they first appear, since doing so could avoid the need for more drastic measures. We are committed to helping schools respond appropriately to a child's behavior, promoting the use of appropriate behavioral interventions, and increasing the likelihood of success in school and school completion for some of our most at-risk students.

In 1975, when Congress enacted the Education for All Handicapped Children Act, the predecessor statute to the IDEA, more than one half of our nation's children with disabilities did not receive appropriate educational services, and one million of those children were excluded entirely from a publicly-supported education. 20 U.S.C. § 1400(c)(2)(B)-(C). All too often, school officials used disciplinary measures to exclude children with disabilities from education simply because they were different or more difficult to educate than nondisabled children. Thus, IDEA guarantees our nation's children with disabilities equality of educational opportunity by requiring States receiving IDEA funds to make a free appropriate public education (FAPE) in the least restrictive environment available to eligible students with disabilities residing in the State in mandatory age ranges. IDEA also guarantees those children and their parents a range of procedural protections and safeguards.

It has always been the position of this Administration that our schools must be safe, disciplined, and drug-free. We believe that the final regulations for Part B of IDEA '97 expand the authority of school officials to protect the safety of all children, while ensuring that essential rights and protections are available to students with disabilities.

In the reauthorization of IDEA by the IDEA Amendments of 1997 Pub. L. 105-17 (IDEA '97), Congress recognized the need to balance school districts' need for increased flexibility to deal with safety issues, with maintaining needed due process and procedural protections for children with disabilities and their parents. We believe that the use of hearing officers, in certain instances, to decide the appropriateness of a forty-five day removal to an interim alternative educational setting, strikes the proper balance.

We hope that you find the above explanation helpful. If you would like further assistance, please contact the Office of Special Education Programs and speak with Ms. Camellia Wang at (202) 401-1891 or Dr. JoLeta Reynolds at (202) 205-5507, or you may reach Ms. Linda Whitsett, the Louisiana State Contact in the Monitoring and State Improvement Planning Division, at (202) 205-8013.

Sincerely,

Kenneth R. Warlick  
Director  
Office of Special Education Programs

cc: **Ms. Virginia C. Beridon**  
State Director