

August 30, 2004

The Honorable Maurice Hinchey
House of Representatives
Washington, D.C. 20515

Dear Congressman Hinchey:

Thank you for your letter regarding the Department's decision to disallow funding for the captioning or video description of nearly 200 television programs. I appreciated hearing your views on this issue.

As you know, the 1997 Amendments to the Individuals with Disabilities Education Act (IDEA) specified that after September 30, 2001, only "educational, informational, and news programming" could be captioned with IDEA funds. Because the 1997 amendments did not define the terms "educational" and "informational," the Office of Special Education Programs (OSEP) published a public request for comments. (A copy of the notice is [enclosed](#).) More than 3,000 respondents from the deaf community responded, stating that all programming on TV was informational because it provided access to the popular culture. Because it is clear that Congress intended to limit what could be captioned or described with IDEA funds, these comments did not provide a basis for regulating further on the statutory terms.

Grantees that provide captioning or video description for television have been utilizing the expertise of their consumer advisory groups to determine whether or not the programs to be captioned or described are "educational, news, or informational." Although we recognize the ongoing efforts of those advisory groups, we believe that some of the programs that they had recommended were not appropriate under the requirements in the IDEA 1997 Amendments.

The Department determined that the most consistent way to implement the law is to support captioning and video description only for programming that clearly fits within the "educational, informational, and news" categories. To help ensure that the law is properly implemented, the Department asked five external experts to conduct independent reviews of all programming submitted for IDEA funding. These experts included individuals with disabilities, individuals with expertise in children's television, individuals conducting research in video description and in captioning, and individuals with expertise in literacy. We provided the experts with a list of television programming for grants that were subject to renewal (continuation awards) for activities to provide captioning or video description.

The experts were given the following examples of educational, informational, and news programming, that clearly fit within the IDEA requirements, to guide their decision-making:

- 1) Children's programming that is likely to produce an educational benefit, including educational programs appropriate for use in a classroom setting and programs of high interest (exception: programs that contain excessive violence or adult content);
- 2) News and news magazines (exception: entertainment or sports news magazines);
- 3) Adult informational or documentary programs (exceptions: nondocumentary feature films and television movies unless they are appropriate for use in the classroom; documentaries that profile entertainment personalities, sports figures, or criminals).

The experts reviewed a list of programs subject to approval for continuation funding. OSEP used the tabulation of this review process to develop a list of recommended programs. The Office of Special Education and Rehabilitative Services (OSERS) reviewed the recommendations. A Dear Colleague Letter and the list of approved and non-approved programs were provided to all grantees.

The Department's decision to limit funding to captioning and video description of programming that clearly fits within the IDEA requirements had no impact on the total amount of captioning and video description actually supported. In every instance where a specific show does not clearly fit within the IDEA requirements, we gave the grantees the opportunity to submit alternative programming.

It is also worth noting that the Federal Communications Commission (FCC) is primarily responsible for implementing and monitoring the closed captioning requirements of the Telecommunications Act of 1996. In this Act, as you know, Congress generally requires that programming be captioned, regardless of distribution technology, to ensure access to persons with hearing disabilities. In the fiscal year 2004 competition we intend to provide support for captioning and video description for locally produced news and children's educational programming that is not required to be captioned, or is specifically exempt, under the FCC's rules. In the notice for this competition we used the FCC's standard of what constitutes children's educational programming. Finally,

we concluded that sports magazine programs could be considered news and that profiles of sports figures could be considered informational. Therefore, we are deleting these as exceptions in the examples we will provide to applicants.

Thank you for your continued support of programs serving individuals with disabilities.

Sincerely,

/s/

Rod Paige

Enclosure

Additional Recipients:

Honorable Edward M. Kennedy
Honorable Tom Harkin
Honorable Janice D. Schakowsky
Honorable Jim McDermott
Honorable Sherrod Brown
Honorable Lynn Woolsey
Honorable Juanita Millender-McDonald
Honorable Jerry F. Costello
Honorable Maxine Waters
Honorable Stephanie Tubbs Jones