



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

JUN 30 1997

Thomas M. Maddock
Interim Director
California Department of Corrections
P.O. Box 942883
Sacramento, California 90283-0001 . '

Dear Mr. Maddock:

This letter responds to your June 5, 1997 letter to Secretary Riley in which you informed the Secretary of the California Department of Corrections' (CDC) "election of its right under the IDEA to not provide special education services to convicted felons." I am writing to inform you that the Department of Education does not interpret the Individuals with Disabilities Education Act (IDEA) to provide States with the option to refuse to provide these services.

Part B of the IDEA and its implementing regulations have consistently required that a free appropriate public education be available to all eligible children with disabilities, including eligible youth with disabilities in State adult correctional facilities. See, 34 CFR §300.2(b)(4); Alexander S. v. Boyd, 876 F. Supp. 773, 800-801 (D.S.C. 1995); Donnell C. v. Ill. State Bd. of Educ., 829 F. Supp. 1016, 1020 (N.D.Ill. 1993); and Green v. Johnson, 513 F. Supp. 965, 976 (D.Mass. 1981). The IDEA Amendments of 1997 affirm this obligation, while specifically allowing for transfer, by the Governor, of the general supervisory authority for serving youth with disabilities who are convicted as adults under State law and incarcerated in adult prisons, to a State agency other than the State educational agency. Section 612(a)(11)(C). The State education agency remains responsible for making a free appropriate public education available to any youth with disabilities in adult prisons who were not convicted as adults under State law. The 1997 amendments also allow States to limit eligibility for a free appropriate public education to youth with disabilities convicted as adults under State law and incarcerated in adult prisons who, in the educational placement prior to their incarceration is an adult correctional facility, were identified as being a child with a disability **or** who had as individualized education program. Section 612(a)(1)(B).

On June 5, 1997, in his Executive Order W-155-97, Governor Wilson transferred from the California Department of Education (CDE) to CDC the responsibility of ensuring that the requirements of the IDEA are met with respect to eligible youth who are convicted as adults under State law and are incarcerated in adult prisons. The Executive Order also directs CDC to seek from the Congress full exemption from the requirements of the IDEA, and to request that the Department delay any federal compliance hearings or actions pending a final resolution of these additional efforts.

Your June 5 letter states that CDC is electing not to provide special education services to eligible inmates with disabilities in State prisons. There is no reference in the letter to a

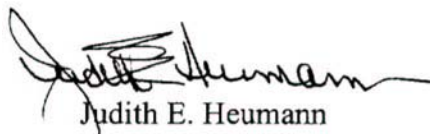
specific IDEA provision which would allow such an election, and, as noted above, the Department does not interpret the IDEA Amendments of 1997 to allow States to exclude this population from the protections of the Act.

The Department of Education's Office of Special Education Programs, during a January 1995 monitoring visit to California, found that special education services were not available to eligible youth with disabilities in any of California's adult correctional facilities. These findings are set out in a February 5, 1996 monitoring report (copy enclosed) which required that corrective action be taken to provide special education and related services to these individuals. To date, corrective action has not been taken, and your June 5 letter requested cancellation of a hearing that had been scheduled to develop a compliance agreement.

Section 616(a) of the IDEA provides that when the Secretary finds that a State has failed to comply substantially with the Act, he may withhold, in whole or in part, further payments to that State or may refer the matter for appropriate enforcement action, including referral to the Department of Justice. Section 616(c) provides that any withholding of funds to an agency, other than the State education agency, that is responsible for youth with disabilities convicted as adults and incarcerated in adult prisons and that has not complied with the IDEA, is limited to funds provided to that agency and to an amount that is proportionate to the percentage of eligible children and youth with disabilities in the State who are in adult prisons under the supervision of that agency. In addition, section 454 of the General Education Provisions Act provides that, when a recipient of funds under one of the Department's programs is failing to comply substantially with any requirement of that program, the Secretary may enter into a compliance agreement with the recipient or may issue a complaint to compel compliance through a cease and desist order of the Office of Administrative Law Judges.

Thus, the Department has a number of enforcement options to address a substantial failure to comply with the requirements of the IDEA related to eligible youth with disabilities who are convicted as adults and incarcerated in adult prisons. We would prefer to work cooperatively with your agency and to enter into a compliance agreement to bring CDC into compliance with the Act, but we are obligated to move expeditiously to ensure that all eligible children and youth in the State of California have available to them the free appropriate public education to which they are entitled under the IDEA.

Sincerely,



Judith E. Heumann

Assistant Secretary

Enclosure

cc: Honorable Pete Wilson
Honorable Delaine Eastin