JAN 14 2004

Your letter to Secretary of Education Rod Paige has been forwarded to me to respond.

Thank you for your comments concerning captioning or video description activities of the Department of Education. As you may know, funds from an award made under the Individuals with Disabilities Education Act (IDEA) may only be used for video description and captioning of educational, news, and informational television, videos, or materials.

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. Since the 1997 amendments did not define the terms "education" and "informational", OSEP published a public request for comments. More than 3000 respondents from the deaf community responded, stating that all programming on TV was informational because it provided access to the popular culture. Since it was 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.

To help identify appropriate programming, OSEP asked five external experts to conduct independent reviews of all programming submitted for IDEA funding. These five individuals 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 to guide their decision-making:

>   1) Children's programming which 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)

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

2) News and news magazines (exception: entertainment or sports news magazines)

3) Adult informational or documentary programs (exceptions: non-documentary 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 the Assistant Secretary for Special Education and Rehabilitative Services reviewed the recommendations. A Dear Colleague Letter and the list of approved and non-approved programs were provided to all grantees. Grantees were given the opportunity to submit alternative programming so there was no reduction in the total amount of programming provided.

Congress has already addressed the need to expand media access for individuals who are deaf or hard of hearing in non-classroom settings. The Television Decoder Circuitry Act of 1990 requires all new television sets to contain a decoder chip that is capable of displaying closed captioned television transmissions. The Telecommunications Act of 1996 (along with a 1997 FCC rulemaking) also contains extensive requirements for the provision of closed captioning, mandating that most television programming be closed captioned by 2006, and requiring captioning of gradually increasing percentages of programming before that date. Given this legislation, most programs no longer captioned with IDEA funds will continue to be accessible through the efforts of the private sector.

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

Sincerely,

Patricia J. Guard   for

Stephanie Smith Lee
Director
Office of Special Education Programs