



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Richard S. Cross  
Commissioner  
Alaska Department of Education and  
Early Development  
Goldbelt Place  
301 West 10th Street, Suite 200  
Juneau, Alaska 99801-1894

FEB 28 2000

Dear Commissioner Cross:

This is in response to your letter dated February 14, 2000, in which you set out what you refer to in your inquiry as "unique circumstances" that you indicate the Alaska Department of Education (AKDE) has faced since the reauthorization of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17, (IDEA '97). You ask about the possibility of a waiver of the State's requirement to review and revise Alaska's state statutes regarding special education in light of the changed Federal requirements of IDEA '97 and its implementing regulations.

As explained below, a waiver is not possible.

Under IDEA '97, to be eligible for funds a State "must demonstrate to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the conditions [set forth in section 612(a) of the Act and the implementing regulations]." Most of the provisions of IDEA '97 regarding State eligibility for formula grants for special education became effective on June 4, 1997, the date of enactment. See: section 201(a) of IDEA '97. Some statutory changes, however, had a delayed effective date, until July 1, 1998. In addition, final Department regulations implementing IDEA '97 were published on March 12, 1999, and became effective on May 11, 1999.

Recognizing that States would need some time to revise State statutes and regulations consistent with new IDEA provisions, for Federal fiscal years 1997, 1998, and 1999, States were allowed -in lieu of providing revised policies and procedures -- to submit an assurance that throughout the period of the grant award, all public agencies in the State would comply with the pertinent requirements of IDEA '97 and the provisions of the then current regulations that were not in conflict with the requirements of IDEA '97, as well as any State laws, policies, and procedures under IDEA approved by this Office that were not inconsistent with IDEA '97. This was not a waiver of State compliance responsibility but a realistic approach to allow States time to conform their policies and procedures to IDEA requirements, while operating in a manner that was consistent with those new requirements. Alaska submitted the required assurances for receipt of FFY 1997, 1998 and 1999 Part B grant awards. States were advised, however, that once the IDEA '97 regulations were final, they would be required to submit their conforming policies and procedures, including revised statutes and regulations, as appropriate, in order to establish

eligibility for subsequent awards. Thus, final policies, procedures or regulations implementing IDEA 97 are to be submitted with the States' FFY 2000 applications. Subsequent to the publication of the final regulations, the Office of Special Education Programs staff worked cooperatively with States to review a State's existing policies and procedures in light of the changes made by IDEA'97 and its regulations and develop an 'Implementation Plan' to guide the State through conforming modifications to policies, procedures and practices. Alaska's 'Implementation Plan', like that of other States, identified the IDEA requirements that had changed and for which State statutes and regulations would need to be revised.

The only IDEA-specific waiver authority that would allow a State not to comply with program requirements is the authority the Secretary has to grant waivers relevant to State level nonsupplanting and maintenance of fiscal support in certain very limited circumstances. See: 20 U.S.C. § 1412(a)(18)(C) and 1412(a)(19)(C) and (E); 34 CFR §300.589. Other waiver authority of the Department under programs such as Goals 2000 and the Elementary and Secondary Education Act does not apply and has never applied to the IDEA.

We understand the personnel matters in Alaska that have occurred during the implementation of the new Federal requirements. However, we have an obligation to ensure that a State that participates in the IDEA special education program is operating consistent with IDEA'97 and its implementing regulations and that all children with disabilities in the State have the rights and protections afforded thereunder.

We appreciate your commitment to provide quality educational services to children and youth with disabilities. My staff and I are available to provide any necessary technical assistance to support your efforts.

Sincerely

Kenneth R. Warlick  
Director  
Office of Special Education  
Programs