



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

January 7, 2002

(Address blacked out)

I am writing in response to your December 11, 2002 letter and your conversation of December 18, 2001 with Mr. Martin Benton of my staff concerning issues involving the Kentucky Department of Education's (KDE) Eligibility Documentation Requirements pursuant to Part B of the Individuals With Disabilities Education Act (IDEA). See: 20 U.S.C. §1400 *et seq.* You asked that the Office of Special Programs (OSEP) provide you with a written account of the decisions that were described to you by OSEP staff concerning the December 5, 2001 meeting with KDE about the Eligibility Documentation.

As we discussed with you in our December 7, 2001 conversation and also explained to representatives from KDE in the December 5th meeting, KDE must address the issue of enforceability under Kentucky State law of certain provisions that are contained in KDE's Special Education Procedures Manual. OSEP cannot dictate the methodology that KDE may select to demonstrate that the provisions are enforceable under Kentucky State law. However, it must be clear to OSEP that KDE has the authority to ensure that all IDEA requirements will be enforced.

Although KDE's Eligibility Documentation has not been approved by OSEP, KDE has submitted a written assurance that while it is working toward full approval, all IDEA requirements will be met by public agencies in the State.

With respect to our discussion of KDE's definition of "adverse effect," you will recall that OSEP has no authority to preclude KDE from adopting such a definition. At the same time, KDE cannot implement "adverse effect" in a manner that excludes otherwise eligible children. As explained in our December 7, 2001 conversation, if you or other parents believe that public agencies are implementing this definition in a manner inconsistent with IDEA, a complaint may be filed with KDE.

Thank you for your continuous work to secure appropriate educational services for children with disabilities in Kentucky. I hope that I have responded to your concerns that you expressed to Mr. Benton. If I may provide further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia J. Guard". The script is cursive and fluid.

Patricia J. Guard
Acting Director
Office of Special Education
Programs

cc: Mike Armstrong
State Director