



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

September 4, 1997

Honorable Pete Wilson
Governor of California
State Capitol
Sacramento, California 95814

Dear Governor Wilson:

This is in response to your letter of July 24, 1997, expressing concern about the condition placed on California's federal grant under Part B of the Individuals with Disabilities Education Act (IDEA). I hope this also addresses the issues raised in your April 18, 1997, letter regarding promulgation of new IDEA regulations on special education service for youth with disabilities in adult correctional facilities.

Regarding the grant award condition, Assistant Secretary Judith E. Heumann's letter of July 14, 1997, was entirely appropriate. This Department's responsibility is to enforce the requirements of the IDEA, while ensuring continued funding for special education services for all eligible children and youth with disabilities in California. The IDEA Amendments of 1997, which passed Congress by large majorities of Republicans and Democrats, made it clear that all States must serve eligible youth with disabilities in adult correctional facilities. There are no provision in the law that allow a State to elect to exclude all youth in adult facilities. As a result, as a condition of your IDEA grant, you do not have the option of rejecting the provision of these services. This requirement is imposed by the statute; not by the Department of Education. The specific condition that the Department imposed upon California's grant was a reporting requirement regarding efforts made to serve this population. This condition was imposed based upon California's history of noncompliance on this issue.

I would also like to correct what appears to be a serious misunderstanding of the enforcement provisions of the IDEA. The new law directs me to take "appropriate corrective action to ensure compliance when there is a failure to provide required services to eligible youth with disabilities in adult correctional facilities. It also provides that if I choose to withhold funds from a State in these circumstances, the amount of that withholding is limited to the portion of the IDEA funds that represents the percentage of eligible children and youth with disabilities in the State who are convicted as adults and are in adult correctional facilities. Nothing in the IDEA requires that I use withholding as a means of enforcement if I believe that it is not the appropriate action to obtain compliance. Both the IDEA and the General Education Provisions Act set out a number of options for obtaining corrective action under Department programs. These options include, in addition to withholding funds, referring the matter to the Department of Justice for injunctive relief, obtaining a cease and desist order, and entering into a compliance agreement. I have not yet made a decision as to the corrective action that is most appropriate in this case.

Since February 1996, when we issued a monitoring report to the State citing its failure to make any special education services available in any of the State's adult prisons, we have attempted to work with the State to ensure compliance with the requirements of federal law. Our efforts to resolve this issue cooperatively included offering the State a compliance agreement, under which it would have up to three years to come into compliance. It is still my strong preference to work with the State to enter into a compliance agreement. I am asking Assistant Secretary Heumann to provide you information on the assistance that would be available from the Department in working toward the development of a compliance agreement.

It is my sincere belief that the numerous changes to IDEA that allow States more flexibility in serving incarcerated youth, which the Department supported, should make possible the development of such an agreement. For example, States need only make available special education services to youth with disabilities, aged 18 through 21, who, in the educational placement prior to their incarceration in an adult correctional facility: (a) were actually identified as being a child with a disability under the IDEA; or (b) had an individualized education program under the IDEA. The new law also provides that youth with disabilities who are convicted as adults and in adult prisons need not participate in general testing program conducted by the State, and that transition services to promote movement from school to employment and other post-school activities need not be provided to individuals in adult prisons whose eligibility under the IDEA will have ended because of their age before they are released from prison.

Most importantly, the educational program and placement of eligible youth with disabilities who are convicted as adults and in adult prisons can be modified if the State shows bona fide security interests. This provision allows these interests to be addressed on a case-by-case basis and in extreme circumstances, such as when a youth with disabilities poses an immediate threat to self or others, permits appropriate modifications or limitations to the educational program or placement including suspension of services for an appropriate period of time.

In California, a majority of incarcerated youth ages 21 or younger are serving sentences of 4 years or less. These young people will be released back into society within a relatively short period of time. The majority of the studies that have looked at the benefits of prison education programs have shown that education has a positive effect on reducing recidivism and a positive effect on post-release employment success. Young prisoners with disabilities are among the least likely to have the skills they need to be able to hold a job. For them, education is probably the only opportunity they have to become productive, independent members of society.

I continue to hope that it will be possible for us to resolve this matter in a manner that serves the educational interests of all children consistent with the requirements of the IDEA.

Yours sincerely,


Richard W. Riley