



UNITED STATES DEPARTMENT OF EDUCATION
The Secretary

October 19, 1998

Honorable William F. Goodling
Chairman, Committee on
Education and the Workforce
House of Representatives
Washington, DC 20515

Dear Bill:

I am writing in response to your September 2, 1998, letter regarding your concerns with the Department's decision to impose special conditions on the Pennsylvania Department of Education's (PDE) Part B grant award under the Individuals with Disabilities Education Act (IDEA). A similar response is being sent to the cosigners of your letter.

I would like to take this opportunity to provide the background surrounding this action to give you a better understanding of the reasons why the Department determined it necessary to impose these special conditions. The Department's Office of Special Education Programs (OSEP) has been working with PDE since 1994 to identify and ensure correction of a number of serious compliance issues regarding implementation of IDEA requirements. A major concern of the Department has been PDE's failure to exercise general supervisory authority over special education programs in the State. For example, between 1988 and 1994, PDE had not utilized a systematic method of monitoring public agencies to determine program compliance. In the 1994 review, OSEP identified extensive noncompliance in local agencies that PDE had not identified because it had discontinued consistent use of its compliance monitoring system. Also, PDE officials had told OSEP that PDE did not have the authority to withhold funds when public agencies failed to comply with State or Federal requirements.

PDE has taken significant positive steps to correct these problems. As you point out in your letter, PDE has established a cyclical compliance monitoring system for reviewing each district once every five years. The Department is pleased to see that Pennsylvania now has in place a system for identifying compliance issues regarding special education programs for its children with disabilities. However, in those instances where a district fails to complete corrective actions in a timely manner, PDE has not taken effective action to secure compliance.

In the case of the Harrisburg School District, since 1995 PDE has been aware of compliance problems under the IDEA that to this date remain uncorrected. These include failure to provide services as indicated on children's IEPs, failure to place children with disabilities in the least restrictive environment, failure to identify needed transition services, and failure to make extended school year services available to children who need them. PDE also reports that there

are continuing problems in Harrisburg regarding meeting evaluation and reevaluation time lines. In addition, we have complaints from parents throughout the State that programs for their children are not being implemented in a manner consistent with the law. For these reasons, we asked PDE to report what it is doing to ensure that corrective action is taken by Harrisburg and other public agencies when PDE identifies deficiencies in meeting Part B requirements.

The exercise of a State's supervisory authority under IDEA, as under other Federal programs, requires both a mechanism to periodically assess the compliance of a district with Federal program requirements, and when that assessment reveals noncompliance, use of whatever tools are necessary to secure compliance. In many cases, merely bringing a problem to light is enough to spur prompt correction. Other times, simply reporting a problem does not bring resolution and a supervising agency must take further action. Certainly technical assistance is a very important tool in the arsenal of any agency with oversight responsibility, State or Federal. In my view, technical assistance should always be offered first, before resorting to enforcement mechanisms. But when technical assistance alone is not enough to bring about timely correction, enforcement measures must be employed. Both the IDEA and the General Education Provisions Act require that, in certain circumstances, a State must respond to noncompliance by school districts through measures such as withholding and reducing payments. That is not to say that monetary sanctions are the only, or even the best, way to secure compliance. The point is that the State is held responsible for achieving compliance throughout the State. Ultimately, though, if correction cannot be achieved through other measures, funding should be withdrawn, as it is not serving the purpose for which it is provided.

As I stated above, since 1994 the Department has been aware of serious IDEA compliance problems in the State of Pennsylvania. Despite our efforts to work with the State to correct these problems, certain of these deficiencies remain uncorrected. The Department has chosen to focus on areas within States that have been identified through public input and other data as having problems. In this way the Department can work closely with a State to determine what actions could be taken to bring their programs into compliance. In addition, as part of its efforts to revise monitoring to be more results focused, the Department has been ensuring that our technical assistance centers are available to assist States in making needed revisions. Focusing our efforts and resources on the problem areas is a common sense approach designed to ensure change where change is need. Many States are implementing the same type of focused monitoring and technical assistance. In fact, we saw some of this same type of focused effort in Pennsylvania.

I have reviewed the circumstances of this case, as you requested, and continue to believe that the imposition of special conditions on this grant was an appropriately measured response to the facts. I want to emphasize, however, that it is not "the first step toward threatening to deny . . . Federal assistance" for special education programs in Pennsylvania. It is, I believe, a useful mechanism that allows Pennsylvania to demonstrate, through quarterly reports, what it is doing to correct the long-standing deficiencies in Harrisburg as well as correct compliance problems in other districts so that all children with disabilities in Pennsylvania are afforded the education

they are guaranteed under the IDEA. These special conditions are tailored to the particular issue and do not delay or deny any Federal IDEA funding to Pennsylvania. Pennsylvania has already notified us that it has accepted the grant award with the special conditions and that it will provide the quarterly reports requested. Our experience has been that in appropriate circumstances, the imposition of special conditions has been an effective means of achieving compliance while continuing to provide Federal funding. I have every expectation that we will have similar success in this instance. '

I share your commitment to ensure that children with disabilities in Pennsylvania receive a free appropriate public education. I understand that Assistant Secretary for Special Education and Rehabilitative Services Judy Heumann and her staff have offered to meet with you or your staff, if requested, and with the State officials and their staff as well, to provide any information or assistance. We remain committed to do all we can to resolve this matter to the benefit of those IDEA is designed to serve.

Yours sincerely,


Richard W. Riley