



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Nov 6, 1997

Mr. Russell Shaddix
Director of Special Services
Eureka City Schools
3200 Walford Avenue
Eureka, California 95503

Dear Mr. Shaddix:

Secretary Richard W. Riley has asked me to respond to your letter to him of May 16, 1997. In your letter, you expressed your opposition to this Department's "threats to withhold \$300 million in special education funds until California begins to provide special education services to convicted adult felons."

First, I want to clarify that this Department has not threatened the State with loss of its entire grant under Part B of the Individuals with Disabilities Education Act (IDEA). The intent of this Department is, and has consistently been, 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. Indeed, on July 16, 1997, the Department awarded to the State its full 1997 federal fiscal year grants under Part B and Section 619 of the IDEA.

Second, I want to clarify the requirements of current federal law regarding the provision of special education services to youth with disabilities who are incarcerated in adult State prisons. On June 4, 1997, the President signed into law the IDEA Amendments of 1997. That legislation includes a number of provisions regarding special education services for youth with disabilities in adult prisons, which reflect careful and extensive consideration of the issue by the Congress. These changes to IDEA make it clear that all States must serve eligible youth with disabilities in adult correctional facilities, but provide States with significant flexibility in serving incarcerated youth.

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 programs conducted by the State, and that the provisions requiring transition services to promote movement from school to employment and other post-school activities do not apply to individuals in adult prisons whose eligibility under the IDEA will end because of their age, before they will be 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 or compelling penological interests that cannot otherwise be accommodated. This provision allows a team of professionals to address these issues on a case-by-case basis, and to respond to extreme circumstances, such as where a youth with disabilities poses an immediate threat to self or others, by making appropriate modifications or limitations to the educational program or placement, including suspension of services for an appropriate period of time. The Department has recently published proposed regulations under the IDEA, which are consistent with the requirements of the statute, as outlined above. A copy of the proposed regulations is enclosed.

The Department believes that providing special education to incarcerated youth with disabilities is good public policy. 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.

This is hardly surprising in light of the fact that nationwide, the literacy of prisoners is very, very low. About one-third of prisoners are unable to perform such simple job-related tasks as locating an intersection on a street map, or identifying and entering basic background information on an application. Another one-third are unable to perform slightly more difficult tasks such as writing an explanation of a billing error or entering information into an automobile maintenance form. Only about one in twenty can do things such as use a schedule to determine which bus to take. 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 hope that this letter clarifies the position of the Department and the requirements of the IDEA on this issue.

Sincerely,



Thomas Hehir
Director
Office of Special Education Programs

Enclosure