



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

Archived Information

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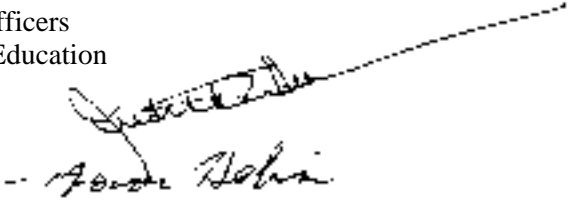
April 28, 1998

MEMORANDUM

TO : Chief State School Officers
Directors of Special Education

FROM : Judith E. Heumann
Thomas Hehir

SUBJECT : Effective Date of the New IEP Requirements



JoLeta Reynolds

The purpose of this Memorandum is to provide informal guidance announcing that the Department intends to regulate to permit a phased-in implementation of new requirements regarding Individualized Education Programs (IEP)s by specifying that IEPs developed on or after July 1, 1998 must meet the new IEP provisions of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). This position will be reflected in the final regulations implementing IDEA '97.

Less than a year ago, with the passage of IDEA '97, the Congress expressed its overwhelming support for improving educational results for children with disabilities. President Clinton expressed his support of the legislation by signing the bill June 4, 1997. Most provisions of the law took effect upon signing, with the implementation date for other provisions being specified at later dates. The Department immediately launched aggressive technical assistance efforts, including regional training sessions for State Directors of Special Education and a national training session for parent training center personnel.

The Department published a Notice of Proposed Rulemaking (NPRM) implementing the statutory changes made by IDEA '97 in the *Federal Register* on October 22, 1997, at 62 *Fed. Reg.* 55026. These proposed regulations were open for public comment through January 20, 1998. The public comment period gave interested parties an opportunity to let the Department know how the proposed rules will affect them, their school systems and their communities, as well as share with us their views on other possible ways of implementing the statutory provisions. The wide variety of comments received on the proposed regulations will assist the Department to make sound decisions that are in the best interest of all children and that will lead to better results for children with disabilities.

The IEP is the centerpiece of this landmark legislation. The effective date for new IEP provisions was delayed until July 1, 1998. Not long after the enactment of the 1997 Amendments last June, we began to encourage State officials to begin to take steps to implement the new law, including the IEP requirements, and most of you have been proceeding on the basis that all IEPs must comply with the new IEP requirements

by July 1, 1998, (the position taken in the October 22, 1998 NPRM). Each of you is commended for the efforts you have made to implement the new IEP provisions, and we encourage you to continue your efforts. However, upon further review of the statute and consideration of the comments, we are proposing to adjust the Department's position as announced in the NPRM on the IEP effective date to accommodate a phased-in implementation period.

Because of the importance of appropriate implementation of these critical IEP provisions to achieve the purpose of IDEA '97 -- that is, to ensure better results for children with disabilities -- we intend to regulate to require that IEPs developed on or after July 1, 1998 meet the new requirements. This position will be reflected in the final rule. At the same time, we continue to encourage States and LEAs to conform to the new requirements as soon as possible. Particular attention should be given to conducting IEP meetings under the new requirements in advance of scheduled annual review dates in those situations in which IEPs were developed this spring using the old requirements, to the extent it is possible to do so. In this regard, we would strongly encourage all of you to grant any reasonable request from parents for an IEP meeting to address the new statutory IEP provisions. As always, we encourage you to do everything feasible to inform parents of the important changes resulting from IDEA '97 so they may be effective partners in the education of their children.

In addition, it is important to note that this delay in implementation applies only to those IEP provisions that were not required prior to IDEA '97; for example, the requirement regarding the regular teacher being a member of the IEP team, and the requirement that the IEP contain an explanation of the extent, if any, to which the child will not participate with nondisabled children. On the other hand, public agencies must implement other requirements under IDEA '97 that are already in effect, such as the participation of children with disabilities in State and district-wide assessments (but not the alternate assessments, which are required as of July 1, 2000). Public agencies must also comply with the requirements of Section 504 of the Rehabilitation Act and/or those in effect under the IDEA even before the enactment of IDEA '97, such as providing children with disabilities with access to the general curriculum and the obligation to provide the services identified by the IEP team as necessary for the child to receive FAPE, which, depending on the individual educational needs of the child, could include instruction in Braille and its use, assistive technology and the provision of technology services and devices, services addressing language and communication needs, and positive behavioral strategies.

Again, we wish to commend those States and local Directors of Special Education who have taken seriously the prompt implementation of IDEA '97, including the new IEP provisions, by effectively implementing these new regulations. We urge your continued efforts in this area. The children are the beneficiaries.

As it is with you, the effective implementation of IDEA '97 is a major Departmental goal. We hope that this change will assist you in effectively implementing IDEA '97 and ensuring better results for children with disabilities. After final regulations are published this spring, we are planning to hold additional training sessions. We look forward to seeing you then.