

from the project directors and to conduct a survey from a sample of TTT participants in 2004.

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Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address [KatrinaIngalls@ed.gov](mailto:KatrinaIngalls@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; List of Correspondence

**AGENCY:** Department of Education.

**ACTION:** List of correspondence from January 2, 2004, through March 31, 2004.

**SUMMARY:** The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

**FOR FURTHER INFORMATION CONTACT:** Melisande Lee or JoLeta Reynolds. Telephone: (202) 205-5507 (press 3).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain a copy of this notice in an

alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from January 2, 2004, through March 31, 2004.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

#### Part A—General Provisions

##### *Section 602—Definitions*

Topic Addressed: Child With a Disability

○ Letter dated February 2, 2004, to individual (personally identifiable information redacted), clarifying that if a child is evaluated as having one of the disabilities specified in the definition of child with a disability in 34 CFR 300.7(a)(1), and, by reason of that disability, needs special education and related services, a public agency may not deny the provision of a free appropriate public education (FAPE) to the child because the child is advancing from grade to grade.

##### *Section 605—Acquisition of Equipment; Construction or Alteration of Facilities*

Topic Addressed: Construction of Facilities

○ Letter dated March 26, 2004, to Mississippi Water Valley School District Program Developer Butch Stevens listing the general principles for determining whether expenditures for construction of facilities are allowable under the IDEA.

#### Part B—Assistance for Education of All Children With Disabilities

##### *Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations*

Topic Addressed: Distribution of Funds

○ OSEP memorandum 04-07 dated March 1, 2004, regarding implementation of the funding formula

under the IDEA, specifically the year of age cohorts for which FAPE is ensured.

Topic Addressed: Distribution of Funds Provided to the Secretary of the Interior

○ Letter dated January 20, 2004, to Bureau of Indian Affairs Special Education Director Keith Neves, clarifying that in order to comply with the requirements of section 611(i) of IDEA, the Bureau of Indian Affairs (BIA) must be able to demonstrate that for each Federal fiscal year as specified in its grant award letter, 80 percent of its section 611(c) funds are used to provide special education and related services to children with disabilities ages 5 through 21 enrolled in BIA operated or funded schools and 20 percent of its section 611(c) funds are distributed to the tribes or tribal organizations for the coordination of services for children with disabilities ages 3 through 5.

##### *Section 612—State Eligibility*

Topic Addressed: Free Appropriate Public Education

○ Letter dated January 28, 2004, to individual (personally identifiable information redacted), clarifying that the IDEA does not require that private schools provide special education and related services that meet the needs of all students with disabilities, and it does not require that States certify all private schools to provide services to all students.

Topic Addressed: Confidentiality of Education Records

○ Letter dated February 25, 2004, to Alabama Department of Education State School Nurse Consultant Martha Holloway from Family Policy Compliance Office Director LeRoy S. Rooker, explaining, in response to an inquiry regarding immunization records of students, that the Health Insurance Portability and Accountability Act of 1996 did not apply because the records were education records subject to the Family Educational Rights and Privacy Act (FERPA), and explaining limitations to the "health and safety emergency" exception under FERPA.

○ Letters dated February 25, 2004, to Pennsylvania Department of Education Assistant Counsel Amy C. Foerster and February 18, 2004, to California Department of Education Special Education Consultant Dr. Allan M. Lloyd-Jones from Family Policy Compliance Office Director LeRoy S. Rooker, clarifying the requirements under FERPA and the IDEA regarding the release of education records in connection with studies conducted by other agencies or organizations

pertaining to autism and other developmental disabilities.

#### Section 615—Procedural Safeguards

Topic Addressed: Independent Educational Evaluations

○ Letter dated February 20, 2004 to California Department of Education Assistant Superintendent Alice D. Parker, regarding the rights of parents in the selection of an evaluator to perform an independent educational evaluation.

#### Part C—Infants and Toddlers With Disabilities

##### Section 635—Requirements for Statewide System

Topic Addressed: Child Find

○ Letter dated February 12, 2004, to individual (personally identifiable information redacted), regarding the State lead agency's child find responsibilities under Part C of IDEA and whether a hospital can disclose information regarding an infant or toddler to a State's lead agency.

##### Section 636—Individualized Family Service Plan

Topic Addressed: Transition

○ Letter dated February 11, 2004, to Texas Interagency Council on Early Childhood Intervention Executive Director Mary Elder, regarding whether parental consent is required to disclose referral information from a lead agency under Part C of IDEA to the State education agency or local education agency about children who will shortly turn three and transition from receiving early intervention services under Part C to potentially receiving special education and related services under Part B.

#### Part D—National Activities To Improve Education of Children With Disabilities

##### Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

##### Section 687—Technology Development, Demonstration, and Utilization; and Media Services

Topic Addressed: Captioning

• Letter dated January 14, 2004, to individual (personally identifiable information redacted), regarding the types of programming that could be captioned using IDEA funds.

#### Other Letters That Do Not Interpret the Idea But May Be of Interest to Readers

Topic Addressed: Accountability

• Letter to Chief State School Officers dated March 2, 2004, providing guidance under the No Child Left Behind Act of 2001 (NCLB) regarding how States might seek an exception to the requirements regarding the number of proficient scores of students with the most significant cognitive disabilities who take alternate assessments based on alternate achievement standards that may be included in annual yearly progress decisions.

#### Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: May 14, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2169-020]

#### Alcoa Power Generating, Inc. (APGI); Notice of Settlement Agreement and Soliciting Comments

May 14, 2004.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

- Type of Application: Settlement agreement.
- Project No.: 2169-020.
- Date Filed: May 7, 2004.

d. Applicant: Alcoa Power Generating, Inc. (APGI).

e. Name of Project: Tapoco Project.

f. Location: On the Little Tennessee and Cheoah Rivers in Graham and Swain Counties, North Carolina and Blount and Monroe Counties, Tennessee. The project affects Federal lands.

g. Filed Pursuant to: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. Applicant Contact: Mr. Norman L. Pierson, Property and Relicensing Manager, Alcoa Power Generation Inc., Tapoco Division, 300 North Hall Road, Alcoa, TN 37701-2516, (865) 977-3326.

i. FERC Contact: Randy Yates at (770) 452-3784, or [lorance.yates@ferc.gov](mailto:lorance.yates@ferc.gov).

j. Deadline for Filing Comments: The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (<http://www.ferc.gov>) under the "e-filing" link.

k. Alcoa Power Generating, Inc. (APGI) filed the Comprehensive Settlement Agreement on behalf of itself and 22 other stakeholders. The purpose of the Settlement Agreement is to resolve, among the signatories, all issues related to APGI's pending Application for a New License for the Tapoco Hydroelectric Project. The issues resolved through the settlement relate to project operations; modifying impoundment rule curves; minimum flows; fish reintroductions; development of vegetation and rare, threatened and endangered species management plans; additions and improvements to recreation facilities; certain land use issues; and cultural resources management. APGI requests that the Commission approve the Settlement Agreement and incorporate