



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

OCT 25 2005

Dr. Robin Jarvis  
Assistant Superintendent  
Louisiana State Department of Education  
P.O. Box 94064  
Baton Rouge, Louisiana 70804-9064

Dear Dr. Jarvis:

Thank you for your letter regarding Louisiana's educational challenges in the wake of Hurricane Katrina. We have reviewed the specific questions and requests you outlined in recent conference calls with the Office of Special Education Programs (OSEP) staff and in your September 7, 2005 e-mail to me. I am pleased to respond. Additional responses to requests for flexibility are included in Secretary Spellings' letter of September 21, 2005 to Shirley Neeley, Texas Commissioner of Education, and her letter of September 12, 2005 to Mississippi Superintendent of Education Hank M. Bounds (copies enclosed).

We understand that Louisiana is making every effort to get displaced children back in school and to provide needed special education and related services as quickly as possible. For children already identified as eligible for special education, we expect that your office will assist districts in obtaining existing student records from the State's databases whenever possible, and that Individualized Education Programs (IEPs) will be developed and implemented in a timely way for those children.

The questions you pose generally involve requests for waivers in the following areas:

- Flexibility in meeting evaluation timelines and the timelines from the time of determination that the child needs special education and related service (i.e., is eligible) to the time of the individualized education program (IEP) meeting. The U.S. Department of Education (Department) currently has no authority to waive these program requirements. The Individuals with Disabilities Education Act (IDEA), however, at section 614(a)(1)(C)(I) provides some flexibility. This provision provides for either a 60-day timeline from receiving parental consent for evaluation to the determination of eligibility or, if the State establishes a timeline within which the evaluation must be conducted, within such timeline. Louisiana, therefore, can establish its own timeline in this particular area.

Under normal circumstances, the Department would expect that a State-established timeline would be the same throughout the State. However, under the extraordinary and unprecedented conditions faced by Louisiana in dealing with the aftermath of the hurricanes, it would be reasonable for Louisiana to establish a different timeline for completing evaluations of all children suspected of having a disability in districts enrolling a significant number of displaced students.

- Unspecified extension and waivers to protect districts if they are not able to meet the timelines for children with disabilities, particularly when student records are not available. The Department currently has no authority to waive the requirements in this request. However, the following information may be of help.

The IDEA addresses the issue of children transferring from district to district within the same State, as well as children transferring to a new school district in a different State.

The IDEA contains specific language regarding what is required for students who have transferred to another school district. See section 614(d)(2)(C). This provision requires the new district to provide services comparable to those in the previous district's IEP (which presumes that the new district has access to the previous IEP) and requires districts to take reasonable steps to promptly obtain a child's records and to respond to those requests for records. For children whose previous IEPs are not immediately available but who are believed to have a disability and be in need of special education and related services, a temporary IEP can be developed with the agreement of the parent. If the parent does not agree, the child should be enrolled in the regular school program until appropriate evaluations and eligibility determinations have been made, unless the parent and the school district personnel agree on some other arrangement.

- An extension of time for submitting documentation to OSEP related to the Federal fiscal year (FY) 2003 Annual Performance Report (APR), which was due September 19, 2005. The timeline has been extended to December 4, 2005.
- An extension of time for submitting your State Performance Plan (SPP). In light of the unforeseen consequences of Hurricanes Katrina and Rita, and in order to ensure an orderly transition to the requirements of the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. No.108-446) (the Act), the Secretary is exercising her transition authority under section 303 of the Act to extend the submission date for State Performance Plans (SPPs) under section 616(b)(1)(A) of the Act for 60 days for the States with respect to which the President has declared that a hurricane disaster exists because of Hurricanes Katrina or Rita. Therefore, we are extending the due date for submission of your State's SPPs until January 30, 2006.

The Department is requesting a broad waiver authority that would enable the Secretary, on a case-by-case basis, to waive or modify certain provisions of Federal law. The Department is not, however, seeking to waive civil rights protections in Federal law. As soon as we have additional information regarding our waiver request, we will be in touch with you to discuss how that authority may be used to address your needs.

Again, thank you for sharing your concerns and requests with us. We appreciate the work you are doing to support families disrupted by Hurricane Katrina. Be assured that we will work with you and your staff in the days ahead as you adjust to meet the needs of children with disabilities. Please feel free to contact Larry Ringer at 202-245-7496 or Cynthia Bryant at 202-245-7284 for additional follow-up or assistance.

Sincerely,



Troy R. Justesen  
Acting Director  
Office of Special Education Program

Enclosures