

Appendix D

**Letters to Secretary Riley from Members of Congress
and from One Governor**

Congress of the United States
Washington, DC 20515

September 2, 1998

Honorable Richard Riley
Secretary
U.S. Department of Education
Washington, DC 20202

Dear Mr. Secretary:

We are deeply concerned over the U.S. Department of Education's decision to impose "special conditions" on the Commonwealth of Pennsylvania's award under the Individuals with Disabilities Education Act (IDEA) for the 1998-99 school year. It appears that in making this conditional award, the Department is taking the first step towards threatening to deny over \$139 million in Federal assistance to over 200,000 children with disabilities in Pennsylvania. We strongly urge you to review the appropriateness of the Department's actions and to consider a more constructive approach to ensuring compliance with IDEA in Pennsylvania.

According to Assistant Secretary Judith Heumann's July 20th award letter to Pennsylvania Secretary of Education Eugene Hickok, the Department's decision to impose these special conditions was based on its conclusion that the Commonwealth "has a history of unsatisfactory performance and has failed to conform to the terms of previous awards with respect to its obligation to ensure provision of a free appropriate public education to children with disabilities". However, this conclusion is largely based on continued problems experienced by only one of Pennsylvania's 501 school districts, the Harrisburg School District.

It is our understanding that the issues related to Pennsylvania's supervision of local districts have already been resolved. The Office of Special Education Programs' (OSEP) 1994 report on the Commonwealth's supervision of school districts was primarily critical of the previous administration's failure to conduct reviews of school districts for compliance with the requirements of IDEA. Since Governor Ridge took office in 1995, Pennsylvania has instituted cyclical reviews of school districts throughout the Commonwealth so that all school districts are reviewed by the Pennsylvania Department of Education (PDE) every 5 years.

We also question the basis upon which the Department has made this decision. It is our understanding that in doing follow-up reviews, the Department focused on a judgmental sample of 6 school districts, with a particular focus on singling out the Harrisburg School District. The Department concedes that despite some continued deficiencies, Harrisburg has made a number of improvements in addressing its

Honorable Richard Riley
September 2, 1998
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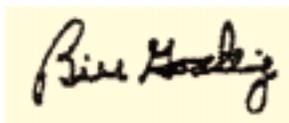
compliance issues. Moreover, PDE has extensively monitored the Harrisburg School District in addition to providing it with technical assistance. Given this, we fail to see how the Department can reasonably draw such a conclusion about Pennsylvania's overall performance in exercising supervision of local school districts under the IDEA.

Finally, despite the Harrisburg School District's progress and efforts in continuing to address these issues, the Department on several occasions has urged Pennsylvania to deny Federal IDEA funds to the district. We fail to see how taking this punitive action will improve the current situation in Harrisburg. Such an action would only hurt children with disabilities in the Harrisburg schools and shift even more of the financial costs on to local taxpayers. The Department should support PDE's continued efforts to work with the Harrisburg School District to fully comply with IDEA.

Secretary Hickok and Special Education Director Penn have demonstrated their willingness to do what is necessary to ensure that children with disabilities in Pennsylvania receive a free appropriate public education. We urge you to reconsider the conditions placed on Pennsylvania's IDEA funding and to provide additional assistance to help the Harrisburg School District comply with the IDEA requirements.

If you have any questions regarding this matter, please do not hesitate to contact any of us, or have your staff contact Jeff Andrade on the House Committee on Education and the Workforce staff at 225-6553.

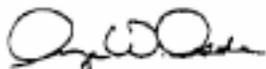
Sincerely,



BILL GOODLING
Chairman, Committee on
Education and the Workforce



ARLEN SPECTER
U.S. Senator



GEORGE W. GEKAS
Member of Congress



RICK SANTORUM
U.S. Senator

THOMAS J. BILLEY, JR.
7TH DISTRICT, VIRGINIA

MEMBER OF
COMMITTEE ON ENERGY
AND COMMERCE
COMMITTEE ON THE DISTRICT
OF COLUMBIA

Congress of the United States
House of Representatives
Washington, DC 20515-4607
April 15, 1994

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The Honorable Richard W. Riley
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary Riley:

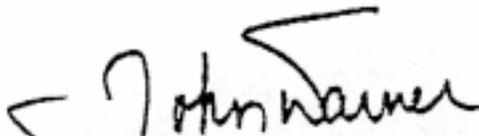
We are writing you to request that the U.S. Department of Education (DOE), Office of Special Education Programs (OSEP), release \$50 million in federal special education funding for Virginia public school divisions.

It has been brought to our attention that a disagreement has arisen between the U.S. DOE and the Virginia Department of Education (VDOE) which stems from differing interpretations of policies under the Individuals with Disabilities Education Act (IDEA). It is our understanding that recent negotiations have failed to reach a compromise and Virginia's Attorney General has filed for an injunction asking the U.S. Court of Appeals for the Fourth Circuit in Richmond to order the U.S. DOE to release \$50 million used for educating students with disabilities. The Attorney General has also filed an administrative appeal with your Department.

Approximately 76 out of 133,000 special education students are affected by the U.S. DOE's policy interpretation. Clearly, it is unfair to hold all children with special education needs in the Commonwealth hostage to a disagreement over policy interpretation. We urge the U.S. DOE to immediately release the Part B grant award under IDEA while this matter is being resolved at the administrative and the judicial level.

Your prompt response on this matter will be greatly appreciated.

Sincerely,


John W. Warner
U.S. Senator


Thomas J. Billey, Jr.
Member of Congress

The Honorable Richard W. Riley

April 15, 1994

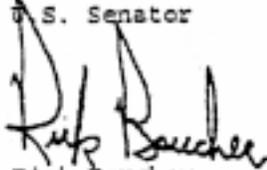
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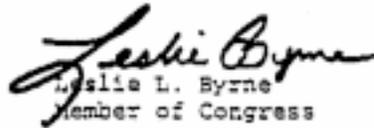
Charles S. Robb
U.S. Senator



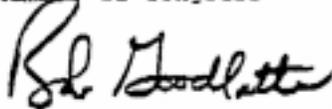
Herbert H. Bateman
Member of Congress



Rick Boucher
Member of Congress



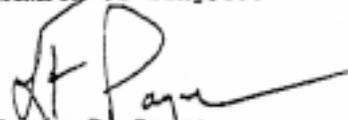
Leslie L. Byrne
Member of Congress



Robert W. Goodlatte
Member of Congress



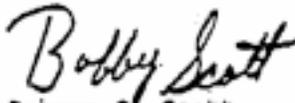
James P. Moran,
Member of Congress



Lewis F. Payne
Member of Congress



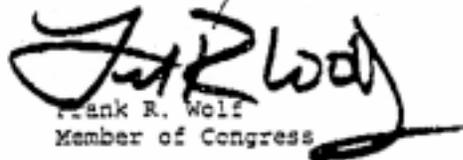
Owen B. Pickett
Member of Congress



Robert C. Scott
Member of Congress



Norman Sisisky
Member of Congress



Frank R. Wolf
Member of Congress



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

February 18, 1994

VIA FACSIMILE

The Honorable Richard W. Riley
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D. C. 20202

Dear Secretary Riley:

I am writing to request your assistance related to the education of children with disabilities in Virginia.

In December 1993, the Office of Special Education Programs (OSEP) requested that the Virginia Department of Education (VA DOE) incorporate in its state regulations a requirement that when a child with a disability is expelled or suspended from school because of misconduct which has been properly determined to be unrelated to the disability, the local school division must continue to provide the child with a free appropriate public education. OSEP also indicated that unless VA DOE implemented this "request", approximately \$60 million in funding under the Individuals With Disabilities Act (IDEA) would be withheld.

As you know, special education services are provided in accordance with a student's individual education plan (IEP). The IEP must meet the disability-related needs of the student. Under OSEP's policy, however, the IEP would be amended based, not on a student's disability, but on student behavior having nothing to do with his or her disability. Such a policy is without statutory support, and is not set forth in any regulation.

The circumstances in which this issue has arisen are set forth in the attached memorandum from Dr. William C. Boeber, Jr., Superintendent of Public Instruction. Of particular importance, VA DOE has met all other requirements to receive federal funds under this program.

The Honorable Richard W. Riley
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The legal validity of OSEP's "request" is subject to serious question, and the withholding of funds under these circumstances is particularly inappropriate. Many localities throughout Virginia face imminent fiscal hardship as a result of OSEP's action. At a minimum, the affected funds should be released immediately, and the opportunity afforded for the issue to receive full consideration without bringing harm to the many special education children and school divisions which count on this Federal support.

As a former governor yourself, you can well appreciate the deep concern generated here in Virginia by the withholding of approximately \$60 million in federal funds to which the Commonwealth of Virginia is entitled under applicable law and regulations.

My concerns, however, go beyond the issues of federalism and finances implicated by OSEP's policy. There are also important issues of school safety and student accountability.

OSEP's policy essentially instructs students with disabilities that they may violate school disciplinary rules with impunity. Under OSEP's policy, students with disabilities enjoy special protection from disciplinary action even when their actions, constituting violations of school regulations, are unrelated to any disabling condition or conditions. This is true even in circumstances where the disability is slight and the violation is quite serious, such as bringing a firearm to school, assaulting a teacher, or distributing drugs.

Concern for the safety of students and teachers alike counsels strongly against OSEP's policy. Moreover, these are times when young people need to be taught to assume responsibility for their actions, and OSEP's policy sends exactly the opposite message.

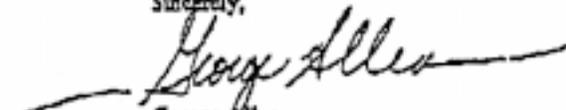
Let me assure you that we in Virginia have the highest commitment to the rights and interests of disabled citizens, and to full compliance with all applicable federal provisions. The OSEP policy, however, is to the detriment of all students -- disabled and non-disabled. It is an ill-conceived "request", and one which is without a sound basis in law or public policy.

The Honorable Richard W. Riley
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I respectfully urge you to order that the affected funds be released during the pendency of this dispute. Further, I request that the Commonwealth of Virginia be afforded a fair and adequate opportunity to present our position on this important question for consideration by you and, if necessary, the President.

The President has expressed a desire to relieve the states of unnecessary and excessive federal mandates. We are heartened by that timely expression, and look forward to your beneficial intervention in this matter.

Sincerely,



George Allen

GA/jhw

Attachment

cc: The Honorable Deverly T. Sgro
Secretary of Education

Dr. William C. Boshert, Jr.
Superintendent of Public Instruction