



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

MAR - 2 2011

Hosanna Mahaley  
Acting State Superintendent of Education  
Office of the State Superintendent of Education  
District of Columbia  
810 First Street, NE, 9<sup>th</sup> floor  
Washington, District of Columbia 20002

Dear Ms. Mahaley:

This is in response to then-Interim Superintendent Colleye's December 21, 2010 letter to Dr. Alexa Posny requesting guidance on whether the District of Columbia has an obligation to provide a free appropriate public education (FAPE) to students with disabilities convicted as adults under District of Columbia law and incarcerated in Federal prison. In Ms. Colleye's letter, she cites previous guidance from the Office of Special Education Programs (OSEP) within the U.S. Department of Education (Department) indicating that States do not have an obligation to provide special education and related services under the Individuals with Disabilities Education Act (IDEA) to individuals in Federal prisons<sup>1</sup>.

The provisions of the IDEA apply to each State<sup>2</sup> that receives Federal funds under Part B of the IDEA and all political subdivisions of the State that are involved in the education of children with disabilities, including State and local juvenile and adult correctional facilities. See 34 CFR §300.2. As noted in OSEP's *Letter to Yudien* dated August 19, 2003, the IDEA makes no specific provision for funding educational services for individuals with disabilities incarcerated in Federal prison. Individuals in the Federal correctional system fall under the jurisdiction of the Federal Bureau of Prisons within the Department of Justice. Therefore, absent any other applicable law, the District of Columbia does not have an obligation under the IDEA to provide FAPE to students with disabilities convicted as adults under District of Columbia law and incarcerated in Federal prison.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

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<sup>1</sup> See Preamble to Notice of Proposed Rulemaking; Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities; and Service Obligations Under Special Education-Personnel Development To Improve Services and Results for Children with Disabilities, 70 Fed. Reg. 35782, 35810 (June 21, 2005). See also, *Letter to Yudien*, 39 IDELR 270 (August 19, 2003).

<sup>2</sup> The definition of "State" in IDEA section 602(31) and 34 CFR §300.40 includes the District of Columbia.

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If you have additional questions, please feel free to contact Lisa Pagano by telephone at 202-247-7413 or by email at [Lisa.Pagano@ed.gov](mailto:Lisa.Pagano@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", with a long horizontal flourish extending to the right.

Melody Musgrove, Ed.D.  
Director  
Office of Special Education Programs