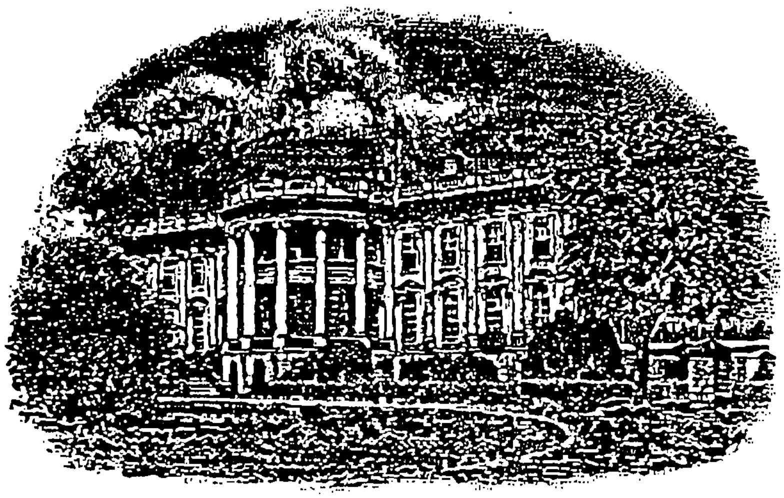
The White House



Office of Counsel to the President
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U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

August 7, 1997

MEMORANDUM FOR THE ACTING ASSOCIATE ATTORNEY GENERAL

FROM: Isabelle Katz Pinzler
Acting Assistant Attorney General
Civil Rights Division

SUBJECT: California's Failure To Comply With The Individuals With Disabilities Education Act Amendments of 1997

The United States Department of Education (D.Ed) has requested that we bring a lawsuit against the State of California to require it to comply with the Individuals with Disabilities Education Act as amended by the Individuals with Disabilities Education Act Amendments of 1997 (hereinafter referred to as the IDEA) and to make available a free appropriate public education to all eligible children with disabilities who are convicted as adults under state law and are incarcerated in adult correctional facilities.

D.Ed has not completed all the prerequisites for referring the matter to us for a lawsuit. However, the State has made it clear that it will continue to refuse to provide services to this identified population. Below, we set out in summary form, the strengths and weaknesses of the case, especially in light of the relief that we seek.

Statutory scheme

The IDEA provides grants to states for the education of individuals (up to age 21) with disabilities. States must provide matching funds such that the States pay up to 94% of the cost of the services provided. The IDEA and its implementing regulations have consistently required that a free appropriate public education be available to eligible children with disabilities, including eligible youth with disabilities in state adult correctional facilities. See 34 CFR §300.2(b)(4); Alexander S. v. Boyd, 876 F. Supp. 773, 800-801 (D.S.C. 1995); Donnell C. v. Ill. State Bd. Of Educ., 829 F. Supp. 1016, 1020

(N.D. Ill. 1993); Green v. Johnson, 513 F. Supp. 1016, 1020 (D. Mass. 1981). The IDEA Amendments of 1997 affirm this obligation, although, for youths 18-21, the obligation is now limited to individuals who were identified as having a disability or who had an individualized education program prior to being incarcerated. The amendments also allow states to transfer responsibility for providing these services from the state educational agency to the state's corrections agency. §§ 612(a)(1)(B), 612(a)(11)(C).

For the State of California to be eligible for its $300 million IDEA grant, it must demonstrate to the satisfaction of the Secretary of Education that the State has in effect policies and procedures to ensure that a free public education is made available to all children with disabilities residing within the state, including eligible children incarcerated in adult facilities. The Secretary requires that states provide this assurance in writing.

The IDEA has an enforcement mechanism under which, after notice and an opportunity for a hearing, the Secretary may withhold, in whole or in part, further payments to the state of IDEA funds for failing to comply substantially with the Act. Alternatively, the Secretary may refer the matter to the Department of Justice for appropriate enforcement action. § 616 (a). In situations where, as in California, the Governor has transferred the responsibility for ensuring that appropriate services are made available to eligible children in adult correctional facilities to the California Department of Corrections, the Secretary can take appropriate corrective action to ensure compliance; however, any withholding of funds is limited to the proportion of eligible children in prison to the overall statewide eligible population, § 616(c)(1). In California, it is estimated that this would be less than $1 million of the $300 million award. A referral to the Department of Justice could lead to the filing of a lawsuit to seek specific performance. See United States v. Marion County School District, 625 F.2d 607 (5^{th} Cir. 1980) cert. denied 451 U.S. 910(1981). The lawsuit would seek to require the State to make appropriate services available to eligible children incarcerated in the adult prisons.

Facts

California has never provided special education services to children in adult correctional facilities and at all times since the effective date of the Individuals with Disabilities Education Act Amendments of 1997 (June 4, 1997) has made it clear that they do not intend to provide such services to eligible children.

The State, however, at D.Ed's request, did forward an assurance, signed by an official in the State's Department of Education. This assurance stated that "throughout the period of the grant award, all public agencies in the state will comply with all of the requirements of ... the IDEA Amendments of 1997, including ... the eligibility requirements of Section 612 of the Act, as amended." The state official represented that she had authority to make all of the assurances above. However, a footnote in the assurance statement noted that the Governor had assigned the responsibility of ensuring compliance with the IDEA with respect to eligible individuals incarcerated in adult correctional facilities to the California Department of Corrections (CDC). In a June 5, 1997 letter to Secretary Riley, the interim director of the CDC notified D.Ed that CDC elected not to provide special education services to eligible inmates in state prisons.

On July 16, 1997, the Department of Education forwarded to the state California's Federal Fiscal Year 1997 IDEA grant award. The state was informed that "Acceptance by California of this grant award constitutes an agreement by the State to: ensure compliance with all requirements of the IDEA Amendments of 1997, including the requirements that a free appropriate public education is available to all eligible youth with disabilities in adult correctional facilities...." D.Ed also informed the state that because of its past compliance history and its current assurance statement, D.Ed was imposing special reporting conditions.

On July 24, 1997, Governor Wilson wrote to D.Ed that: "Because the condition reflects a dramatic misinterpretation of the new IDEA law, California rejects the condition and accepts the full grant in accordance with the terms of the grant award notification, minus the amount permitted under the IDEA to be deducted when a state chooses not to divert special education services to convicted felons in state prison." The Governor's letter cited to legislative history which indicated that all IDEA funds could not be withheld for non-compliance, and only a small amount of funds could be withheld i.e., less than 1/4 of 1% in this case. The legislative history does not mention the referral process.

It is our understanding that D.Ed is preparing a response to the Governor's letter.

Strengths of the case

The primary strength of the case lies in the fact that the eligibility requirements of the IDEA require recipients to ensure that a free public education is made available to all children with disabilities residing within the state, including children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility, were identified as being children with disabilities or had individualized education programs. California cannot choose to accept the grant award and not ensure that the services will be made available. Neither California nor the Secretary can modify the terms of the statute. California has declared its open intention to defy that requirement.

Second, California has accepted the award and we anticipate that it will draw, or has drawn, on the available funds. California was aware of the conditions imposed on the grant, and that acceptance would be treated by D.Ed as an assurance of compliance.

The 1997 amendments provided for the first time under the IDEA the authority to refer the case to the Department of Justice for appropriate enforcement and requires the Secretary to take appropriate corrective action to ensure compliance. Specific performance is such a remedy.

Weaknesses of the case

The main weakness of the case lies in the remedy we seek, which is to enforce an agreement that California will claim it did not make. Our suit for specific performance is based on California's assurance that it will provide the services required by the IDEA and its acceptance of the grant, with knowledge of the conditions set out in D.Ed's July 16, 1997, letter. The written assurance provided by California is somewhat ambiguous, and it is not clear that the signer of the assurance actually had the authority to commit the Department of Corrections. In all events, the state will most likely claim that the assurance was a limited one.

Indeed, because of the language of the assurance, D.Ed felt it necessary to send the July 16, 1997, letter informing the state that acceptance of the grant award constituted an agreement that the state would ensure that the appropriate services at adult correctional facilities would be made available to eligible children. California did accept the grant, but claims to have done so on its own terms, rejecting D.Ed's conditions.

Thus, while there is certainly a case for recoupment of funds, (which in any event, California is willing to forgo) there remains a question as to whether California has agreed, either in its assurance or acceptance of the grant, to comply with the applicable law with regard to providing special education and related services to eligible children with disabilities convicted as adults under state law and incarcerated in adult correctional facilities.

California also cites the legislative history of the Individuals with Disabilities Act Amendments of 1997, and particularly portions of Senator Boxer's colloquy with Senators Harkin and Jeffords regarding the treatment of those with disabilities who are convicted as adults and incarcerated in adult prisons. That exchange indicates that if California does not provide special education services in prisons, it stands to lose only one-fourth of 1 percent of its allotted share, and would no longer face the possible loss of 100 percent of its IDEA award. However, the exchange addresses only what the Secretary could withhold, and does not address what remedies could be pursued upon referral to the Department of Justice for appropriate enforcement action.

As we read the IDEA, if California satisfies the eligibility requirements and ensures that it will serve all eligible children, the potential loss of funds is limited -- probably less than $1 million. However, D.Ed does not have to withhold further funding, but can elect to refer the matter to the Department of Justice. Of course, if California does not meet the eligibility requirements, it is not eligible for any funding.

The question comes down to this: whether under the IDEA and as a matter of contract law, California can, by offering to renounce or return the portion of the federal grant earmarked for this particular segment of the population, relieve itself of the legal responsibility to serve that population. We believe that there is a good argument that it cannot, but prevailing in federal court will be difficult.

IDEA / California

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Comments: We have not responded to Wilson's July 24 letter to date.

GOVERNOR PETE WILSON

July 24, 1997

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

Dear Mr. Secretary:

California hereby rejects the condition which one of your Department subordinates has improperly sought to impose upon California's acceptance of the full $306 million federal grant award provided for the Federal Fiscal Year 1997 pursuant to the Individuals with Disabilities Education Act (IDEA) Amendments of 1997. That condition, placed in a cover letter but not in the grant award notification, provided that "[a]cceptance by California of this grant award constitutes an agreement by the State" to make a free public education available to disabled felons over the age of 18 incarcerated in adult correctional facilities, which would divert precious funds from law-abiding children to adult convicts.

Because that condition reflects a dramatic misinterpretation of the new IDEA law, California rejects the condition and accepts the full grant in accordance with the terms of the grant award notification, minus the amount permitted under IDEA to be deducted when a state chooses not to divert special education services to convicted felons in state prison.

Specifically, the new IDEA law gives states the right under IDEA not to divert special education services to individuals "convicted as adults under State law and incarcerated in adult prisons," by limiting "any reduction or withholding of payments to the State" to the proportion of the grant equal to the percentage of the number of eligible individuals in adult prisons divided by the entire IDEA-eligible population. *See* §§ 612(a)(11)(C); 616(c). Indeed, the Act stresses in a separate section that "any withholding of funds ... shall be limited to the specific agency responsible" for the decision not to provide such services to felons in adult correctional facilities.

Notwithstanding the plain wording and legislative intent of the IDEA law, Assistant Secretary Judith Heumann in a July 16, 1997, letter threatened California with the loss of its entire federal grant unless California agreed to divert special education services to convicted felons incarcerated in state prisons. That letter followed a June 30, 1997, letter from Ms. Heumann to California's Department of Corrections (CDC) asserting that, far from the exclusive remedy Congress specified for states electing to not provide such services, the Department "has a number of enforcement options to address a substantial failure to comply with the requirements of the IDEA related to eligible youths with disabilities who are convicted as adults and incarcerated in adult prisons...."

Ms. Heumann's demand subverts the plain meaning of the new IDEA law and is contrary to the legislative history surrounding the Act's enactment. Representative Bill Goodling, Chairman of the Committee on Education and the Workforce, which reported the IDEA reauthorization bill, wrote that the statute "ensures that California would lose only a small share of its entire $300 million Federal allotment for special education if it decides not to provide services for adult prison inmates." Speaker Gingrich similarly recognized California's ability under the Amendments "to deny services for adult prisoners while forfeiting only the pro-rata share of federal funding for that small segment of the total IDEA-eligible population."

The sentiment expressed in the Senate was to the same tune. In a colloquy with Senators Harkin and Jeffords, Senator Boxer expressed the view that "if California does not provide special education services in prisons it stands to lose only one-fourth of 1 percent of its allotted share [and] would no longer face the possible loss of its allotted special education funds." Senators Harkin and Jeffords expressed their unqualified agreement with that interpretation of the Amendments. Cong. Rec. S4375-76 (May 13, 1997).

This legislative intent will be determinative in interpreting the legislation, as it will dispositively outweigh any competing interpretation subsequently given by your Department. *See Chevron v. Natural Resources Defense Council*, 467 U.S. 837, 843 n.9 (1984) (the judiciary "must reject administrative constructions which are contrary to clear congressional intent.").

Ms. Heumann attempts to buttress her threat of a total loss of California's federal grant on a second, equally spurious theory: that proportionate withholding is unavailable since the California Department of Education is also responsible for this decision as it "retains responsibility under that section for any eligible youth with disabilities in such facilities who were not convicted as adults." Ms. Heumann is misinformed. There are no youths incarcerated under the jurisdiction of CDC who have not been convicted as adults.

Because Congress's recent IDEA legislation made crystal clear that the decision not to divert precious special education funds to convicted felons does not jeopardize the entire grant, I regard Ms. Heumann's attempt to condition federal funding to California on this unlawful basis as out-and-out extortion.

Before concluding, allow me to offer the observation that there may be certain individuals within your agency zealous to impose their extralegal agenda upon the country. Congress's recent passage of the IDEA reauthorization bill responded to efforts by the Department to require that special education funds be diverted from law-abiding children to incarcerated felons in states' prisons. The new law must be respected by the Department. This present episode closely follows an aborted effort, now reversed, by the Department to coerce schools in Texas not to comply with the Fifth Circuit Court of Appeals' decision in *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), *cert. denied*, 116 S. Ct. 2580 (1996). It is not within the powers of any agency official to subvert the will of Congress or the courts. Actions like those taken by Ms. Heumann show a deep disrespect for the rule of law.

Should the Department attempt to recoup the entirety of the $306 million federal funding grant to California which supports more than 48,000 disabled children, the Department will force California to divert limited public resources from existing education reforms, such as class size reduction and pupil testing, in order to backfill the loss of federal special education funds. I, therefore, hope you will respect CDC's decision under the IDEA law to return unspent exactly that portion of the 1997 grant that Congress has specified as the remedy for states opting not to spend scarce resources to provide special education services to convicted felons in state prisons.

Californians will perform an accounting to determine the precise figure and remit this amount to the federal government – a reasonable decision in light of the fact that the actual cost of diverting services to convicted felons overwhelmingly exceeds the proportionate reduction.

Sincerely,

Pete Wilson

PETE WILSON

cc: Hon. Trent Lott
Hon. Newt Gingrich
Superintendent Delaine Eastin

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

July 30, 1997

STATEMENT BY SECRETARY RICHARD W. RILEY

I understand that an amendment will be offered to the Labor/HHS/Education Appropriations bill that would undermine the very important bipartisan and bicameral agreement on the IDEA that President Clinton signed into law less than two months ago.

The IDEA legislation is the product of a painstaking process that reflected thoughtful compromises on behalf of all parties and that will bring about improved services and results for children with disabilities. It took at least two years to get a balanced agreement and now, before it is even given a chance to work, efforts are being made to upset it.

As a full participant in this agreement, I strongly oppose any effort to undermine its enforcement. I am committed to honoring the principle that all children ages 3-21 have access to a free appropriate public education. Congress reaffirmed this principle in passing the IDEA amendments last month, which included new provisions allowing reasonable resolution to issues regarding educational services in adult prisons, particularly concerning violent offenders.

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C. 20202

TALKING POINTS ON IDEA PRISONS ISSUE

The Riggs Amendment would effectively repeal the IDEA's guarantee of special education services to youth with disabilities in adult prisons. It would prohibit the Department of Education from investigating to determine if these services are provided. It also would limit the remedies available to the Department of Education in ensuring compliance with the law. This would permit States to "opt out" of providing services if they were willing to give up a very small percentage of their IDEA funds. (The new law limits the amount of withholdings for violations involving youth in adult prisons.)

The IDEA was recently amended with broad bipartisan support. The new law makes clear that eligible youth with disabilities in correctional facilities must be served.

Provisions in IDEA relating to youth with disabilities in adult prisons were the result of extensive negotiations. There are no provisions in the law permitting States to opt out of serving this population. Congress recognized that these young people will be returning to their communities once they have served their sentences and without educational services they are among the least likely to have the skills they need to function in society once they leave prison.

The amended IDEA adds a number of provisions to address concerns raised by California. It gives States greater flexibility and discretion in serving youth with disabilities who are in adult prisons, such as limiting the individuals who are eligible for services and allowing appropriate responses to security issues. For example, where violent young people pose an immediate threat to themselves or others, special education services could be suspended for an appropriate period of time.

The amended IDEA requires the Secretary to "take appropriate corrective action to ensure compliance" with the requirement that eligible youth in adult prisons receive the services to which they are entitled. Under federal law, corrective actions that could be taken by the Secretary include the withholding of IDEA funds, entering into a compliance agreement with a State, issuing a cease and desist order to the State, or referring the matter to the Department of Justice to seek injuntive relief. The only limitation on enforcement action imposed by the IDEA is that, if the Secretary chooses to withhold funds the amount withheld must be proportionate to the percentage of eligible children and youth with disabilities who are in adult prisons.

The Department of Education has informed California that it is willing to work with the State to enter into a compliance agreement that would provide up to 3 years to meet the requirements of the IDEA. California has refused to consider such an agreement or to provide the services required by the law.

COMMITTEE ON EDUCATION AND THE WORKFORCE

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Statement of
The Honorable Matthew G. Martinez D-CA
July 28, 1997

IDEA Requires States to Serve Children with Disabilities Incarcerated in Adult Correctional Facilities

As one of the "Working Group" Members who developed the recently enacted amendments to the Individuals with Disabilities Education Act (IDEA), I want to make it clear that the current IDEA requires States to serve children with disabilities who are incarcerated in adult correctional facilities. Recent attention has been directed towards this subject by efforts in California to not serve this population.

Under the recently enacted amendments to the IDEA, States are permitted to modify some planning and Individualized Education Program (IEP) provisions for those children with disabilities who are incarcerated in adult correctional facilities. In addition, the statute provides that States may elect not to serve those individuals aged 18 to 21 who were not identified as disabled or did not have an IEP in their last educational setting prior to incarceration in an adult correctional facility. States are required to serve *all* other disabled individuals aged 3 through 21 that are not exempt under the provisions of the previous sentence. States that violate this provision may lose the share of funding attributable to the number of children with disabilities who are incarcerated in adult correctional facilities. In addition, the Department has the authority to take other enforcement options, including referral to the Department of Justice.

The IDEA Amendments of 1997 were developed in a bipartisan, bicameral process with direct, hands-on assistance from the Clinton Administration. The Members who were a part of the bipartisan "Working Group" which developed the historic amendments to this statute made a personnel commitment not to offer or support any measures which would a effect the provisions of the statute during the 105th Congress. Influence from forces outside of the process used to craft the IDEA amendments makes light of the overwhelmingly positive support this legislation had during passage in the House and Senate. I would view any efforts to modify the IDEA statute after the careful and painstaking process used to develop the recent amendments as seriously disingenuous.

Special Education Services for Youth in Adult Prisons

Background: This week the House, by voice vote, adopted a Riggs- (R-CA) sponsored amendment to the Labor-HHS-Education Appropriations Bill that would effectively repeal IDEA's guarantee of special education services to youth with disabilities in adult prisons. The Amendment would prohibit the Department of Education from investigating to determine if these services are provided. It would also limit the remedies available to the Department to ensure compliance with the law, permitting states to "opt out" of providing services to this population if willing to give up a very small percentage of their IDEA funds. Although adopted by voice vote, some Democrats joined the Administration in voicing strong opposition to the change.

The controversy over such services has been given a high profile by Gov. Wilson, who has attacked the Department for its position that such services must be provided, and has strongly pressured Rep. Riggs to address the issue legislatively. The Speaker has also been critical of the Department's position.

Question: Why doesn't the Administration support the Riggs Amendment?

Answer: The Administration strongly opposes the Amendment. The IDEA was recently amended with broad bipartisan support, and provisions relating to youth with disabilities in adult prisons were the result of extensive negotiations. The new IDEA gives States greater flexibility and discretion in serving these youth, such as limiting the individuals who are eligible for services and allowing appropriate responses to security issues. However, the new law makes it very clear that eligible youth with disabilities in correctional facilities must be served.

This is the right policy. Congress recognized that these young people will be returning to their communities once they have served their sentences. Young prisoners with disabilities are among the least likely to be literate or to have the other basic skills they need to hold a job. For these youth, education is the best opportunity they have to become productive, independent members of society.

September 18, 1997

Rush To Bruce

Special Education Services for Youth in Adult Prisons

providing STET

Background: This week the House, by voice vote, adopted a Riggs' (R-CA) sponsored amendment to the Labor-HHS-Education Appropriations Bill that would effectively repeal IDEA's guarantee of special education services to youth with disabilities in adult prisons. The Amendment would prohibit the Department of Education from investigating to determine if these services are provided. It would also limit the remedies available to the Department ~~in~~ to ensure ~~ensuring~~ compliance with the law, permitting states to "opt out" of services to this population if willing to give up a very small percentage of their IDEA funds. Although adopted by voice vote, some Democrats joined the Administration in voicing strong opposition to the change.

STET

The controversy over such services has been given a high profile by Gov. Wilson, who has ~~angrily~~ attacked the Department for ~~its position~~ that such services must be provided, ~~even after the IDEA Amendments,~~ and has strongly pressured Rep. Riggs to address the issue legislatively. The Speaker has also been critical of the Department's position.

Question: Why doesn't ~~Does~~ the Administration support the Riggs Amendment? ~~Isn't this legislation consistent with recent congressional action in reauthorizing the IDEA?~~

Answer: The Administration strongly opposes the Amendment. The IDEA was recently amended with broad bipartisan support, and provisions relating to youth with disabilities in adult prisons were the result of extensive negotiations. The new IDEA gives States greater flexibility and discretion in serving these youth, such as limiting the individuals who are eligible for services and allowing appropriate responses to security issues. However, the new law makes it very clear that eligible youth with disabilities in correctional facilities must be served.

~~**Question:** Why should States be required to provide special education to youth with disabilities who are in adult prisons?~~

That is the right policy.

~~**Answer:**~~ Congress recognized that these young people will be returning to their communities once they have served their sentences. Young prisoners with disabilities are among the least likely to be literate or to have the other basic skills they need to ~~be able to~~ hold a job. For these youth, education is ~~probably~~ the ~~only~~ best opportunity they have ~~at~~ to become ~~becoming~~ productive, independent members of society.

September 18, 1997

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Comments: Q+As on Riggs IDEA amendment + SAP on Riggs amendment.

Q: What is the effect of the Riggs Amendment?

A: The Riggs Amendment would effectively repeal the IDEA's guarantee of special education services to youth with disabilities in adult prisons. It would prohibit the Department of Education from investigating to determine if these services are provided. It also would limit the remedies available to the Department of Education in ensuring compliance with the law. This would permit States to "opt out" of providing services if they were willing to give up a very small percentage of their IDEA funds. (The new law limits the amount of withholdings for violations involving youth in adult prisons.)

Q: Is the Riggs Amendment consistent with recent congressional action in reauthorizing the IDEA?

A: No. The IDEA was recently amended with broad bipartisan support. The new law makes clear that eligible youth with disabilities in correctional facilities must be served. Provisions in IDEA relating to youth with disabilities in adult prisons were the result of extensive negotiations. There are no provisions in the law permitting States to opt out of serving this population. Instead, the new law gives States greater flexibility and discretion in serving youth with disabilities who are in adult prisons, such as limiting the individuals who are eligible for services and allowing appropriate responses to security issues. For example, where violent young people pose an immediate threat to themselves or others, special education services could be suspended for an appropriate period of time.

Q: Why should States be required to provide special education to youth with disabilities who are in adult prisons?

A: Congress recognized that these young people will be returning to their communities once they have served their sentences and without educational services they are among the least likely to have the skills they need to function in society once they leave prison. Most studies that have looked at the benefits of prison education programs have shown that education has a positive effect on reducing recidivism and a positive effect on post-release employment success. The literacy rate of prisoners is very low, and young prisoners with disabilities are among the least likely to have the skills they need to be able to hold a job. For them, education is probably the only opportunity they have at becoming productive, independent members of society.

SAP - R 883

million, and does not authorize the Administration's proposed independent student policy. This authorization is no different from the Committee's annual procedure of authorizing the maximum Pell grant award. We urge the House to fully fund Pell grants and to authorize both the maximum award and the independent student change.

The Committee bill funds Education Reform at $1.13 billion, $110 million below the level agreed to in the Bipartisan Budget Agreement. Within the total, Goals 2000 is funded at only $475 million, $145 million below the request. Goals 2000 funds provide essential support to every State's education improvement strategy. We strongly urge the House to restore full funding for Goals 2000.

The Administration strongly opposes a proposed amendment that would prohibit the investigation of violations by and imposition of penalties upon States that do not comply with the statutory requirement of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 to serve eligible individuals with disabilities age 18 or older in adult State prisons. The Amendments reduced States' burden by reducing the number of eligible individuals and by limiting the types of services that must be provided. Since prison education programs have a positive affect on reducing recidivism and on post release employment success, the requirement to serve this population should be properly enforced.

The Administration urges the House to fund Safe and Drug-Free Schools and Communities (SDFSC) at the President's FY98 request of $620 million, $64 million above the House mark. SDFSC, the largest Federal school-based drug and violence prevention program, serves more than 40 million students in over 97 percent of the nation's school districts and is an essential component of a comprehensive effort to reduce teen drug use.

The Administration is concerned about a proposed amendment that would cut funding for the Statistics program by $14 million, which would mean that the Department of Education would not be able to move forward on a number of studies, including those providing key data on early childhood, student achievement, teachers, and adult literacy. The Administration urges the House to oppose this proposed amendment, and to provide the requested level.

The Committee has included language amending the definition of an eligible lender in the Federal Family Education Loan Program. The language would provide a broad exception to the current limitation on how much of a bank's portfolio can be guaranteed student loans, including loans that a bank holds as a trustee for a third party. It would also allow finance companies, the financial solvency of which is not regulated by a public entity as are banks, to be eligible lenders. Both of these provisions would increase the Federal exposure to financial risk and weaken parts of the statute that have been passed specifically in response to prior abuses. The provision should be stricken from the bill.

We urge the House to fund at the President's Budget level other high priority Education programs, including Adult Education, Eisenhower Professional Development, and Charter Schools.