

63 IDELR 230
114 LRP 30480

Letter to White

Office of Special Education and Rehabilitative Services

N/A

July 2, 2014

Related Index Numbers

220.005 Criteria

265.020 In General

405.030 Discrimination

324.010 In General

10.030 Discrimination

Case Summary

In a letter to the Louisiana ED, both OSERS and OESE "strongly recommended" that the state take steps to ensure that a recently passed state law seemingly empowering IEP teams to set their own graduation standards for students with disabilities is implemented in a manner consistent with the IDEA, ESEA, Section 504, and the ADA. OSERS Acting Assistant Secretary Michael Yudin and OESE Assistant Secretary Deborah Delisle observed that House Bill No. 1015, passed on June 23, 2014, gives IEP teams authority to permit students with disabilities to earn a regular diploma without meeting the academic standards applicable to students without disabilities. The bill further provides that such students must be included among those receiving a regular diploma in calculating high school graduation rates. Yudin and Delisle identified several concerns with the bill. Among those concerns was the fact that the law could violate the ESEA by altering the state's academic content and achievement standards required under 20 USC 1111(b). In addition, they noted that the law could result in students with disabilities being denied post-graduation services. They pointed out that under the IDEA, the duty to provide FAPE continues beyond graduation, potentially until a student's 22nd birthday, unless the student graduated with a regular diploma. 34 CFR 300.102(a)(3)(i). "[W]e are very concerned that, if IEP Teams are permitted to set requirements for high school graduation that are not fully aligned with the State's academic content standards, LEAs will determine that students with disabilities who receive diplomas through the alternative pathway established by HB No. 1015 are no longer entitled to FAPE," Yudin and Delisle wrote. Finally, the assistant secretaries recognized that the law could violate Section 504 and the ADA by resulting in different, potentially lower standards being taught to students with disabilities, "thus depriving them of the same opportunities to learn that are available to their nondisabled peers."

Judge / Administrative Officer

Michael K. Yudin, Acting Assistant Secretary

Full Text

Dear Superintendent White:

We understand that the Governor signed into law House Bill (HB) No. 1015 on June 23, 2014. This law assigns sole authority to a student's Individualized Education Program (IEP) Team to exempt those students with disabilities who do not meet the required achievement level on State assessments necessary for promotion or graduation from the promotion and graduation requirements that are applicable to students without disabilities. Further, a student with a disability covered by the law will receive a high school diploma if he or she successfully completes the requirements of his or her IEP, including performance on any assessment required for graduation determined appropriate by the IEP Team, and must be counted as any other student receiving a high school diploma in calculating the graduation rate.

We have significant concerns that the Louisiana Department of Education (LDOE) and its local educational agencies (LEAs) may implement the law in a manner that could violate provisions of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 6311 et seq.) and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 et seq.), as well as Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. 794) and Title II of the Americans with Disabilities Act (Title II) (42 U.S.C. 12131 et seq.). In light of those concerns, we strongly recommend that LDOE take steps to ensure that HB No. 1015 is implemented in a manner consistent with relevant federal laws, in particular in the areas outlined below.

Authority of the IEP Team to Modify Academic Standards

The ESEA requires each State to apply the same challenging academic content and achievement standards to all students, including students with disabilities. ESEA section 1111(b)(1)(B). Further, ESEA makes clear that the authority to set and/or modify those standards rests solely with the State. To the extent that HB No. 1015 permits IEP teams to set different academic standards for some students with disabilities, those actions would violate the ESEA.

Accordingly, LDOE must ensure that IEP Teams do not alter Louisiana's academic content and achievement standards required under ESEA section 1111(b).

Role of the IEP Team in Setting Standards for Graduation, Defining a "Regular High School Diploma," and Protecting the Right to a Free Appropriate Public Education

HB No. 1015 permits any number of students with disabilities to graduate from high school and receive a high school diploma based on meeting their IEP goals and objectives, as determined by their IEP Team, rather than the academic standards applicable to students without disabilities. ESEA regulations in 34 C.F.R. § 200.19(b)(1)(iv) define a "regular high school diploma" as "the standard high school diploma that is awarded to students in the State and that is fully aligned

with the State's academic content standards or a higher diploma and does not include a GED credential, certificate of attendance, or any alternative award." IDEA regulations in 34 C.F.R. § 300.102(a)(3)(iv) contain a substantially identical description of a regular high school diploma.

Further, under the IDEA, the obligation to make available a free appropriate public education (FAPE) continues beyond high school age (in Louisiana, to a student's 22nd birthday) if the student has not graduated from high school with a regular high school diploma, as that term is defined by IDEA section 612(a)(1)(A) and 34 C.F.R. § 300.102(a)(3). Accordingly, we are very concerned that, if IEP Teams are permitted to set requirements for high school graduation that are not fully aligned with the State's academic content standards, LEAs will determine that students with disabilities who receive diplomas through the alternative pathway established by HB No. 1015 are no longer entitled to FAPE. Such determinations would violate the requirement that a State and its LEAs ensure that FAPE is made available to all eligible students with disabilities in the State. IDEA sections 612(a)(1) and 613(a)(1).

Civil Rights Protections

As you are aware, the State has obligations under Section 504 and Title II, both of which prohibit discrimination against individuals with disabilities. Among the disability nondiscrimination protections in these laws are (1) the prohibition against denying a qualified individual with a disability, on the basis of the disability, the opportunity to participate in or benefit from an aid, benefit, or service; and (2) the prohibition against treating individuals with disabilities differently by providing different or separate aid, benefits, or services to individuals with disabilities or any class of individuals with disabilities unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i) and (iv) and 28 C.F.R. § 35.130(b)(1)(i) and (iv). A significant concern raised by HB No. 1015 is that it treats students with disabilities differently because it permits them to be promoted, graduate, and receive a diploma when they have failed to pass State assessments and meet benchmarks that other students are required to meet. Giving IEP Teams authority to apply different standards for promotion or graduation to students with disabilities will result in those students being taught to different and, potentially lower, standards than students without disabilities, thus depriving them of the same opportunities to learn that are available to their non-disabled peers. Based on this, there is a significant risk that HB No. 1015 could be implemented by LEAs in a manner that violates Section 504 and Title II.

To the extent that LEAs implement HB No. 1015 in a manner that is inconsistent with applicable federal requirements, such actions may put at risk the continued approval of Louisiana's ESEA flexibility request or its funding under the ESEA or the IDEA.

We look forward to working with you to ensure that all students in Louisiana receive a high-quality education.

Statutes Cited

20 USC 1412(a)(1)(A)

20 USC 1413(a)(1)

Regulations Cited

34 CFR 104.4(b)(1)(i)

34 CFR 104.4(b)(1)(ii)

34 CFR 104.4(b)(1)(iii)

34 CFR 104.4(b)(1)(iv)

28 CFR 35.130(b)(1)(i)

28 CFR 35.130(b)(1)(iv)

Copyright 2015 © LRP Publications