



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- _____

NOV - 4 2004

Honorable Nicholas C. Donohue
 Commissioner of Education
 New Hampshire Department of Education
 101 Pleasant Street
 Concord, New Hampshire 03301

Dear Commissioner Donohue:

On July 9 of this year, we received a letter from Ms. Suzanne Heath of Hollis, New Hampshire. In her letter, Ms. Heath raised concerns about New Hampshire's implementation of the "highly qualified teacher" requirements under the *No Child Left Behind Act of 2001* (NCLB) for special education teachers who provide direct instruction in core academic subject areas. In her letter she cited a January 14, 2004 memo that was sent from the New Hampshire Department of Education to superintendents and special education directors. The purpose of this letter is to confirm that New Hampshire has made sufficient changes to its policy to resolve these issues.

In reviewing New Hampshire's policy for special education teachers as described in the memo from January 14, we found it to be inconsistent with the requirements for highly qualified teachers of NCLB. The memo did not reflect the programmatic requirements of NCLB and raised concerns that required our evaluation as to whether or not these policies were discriminatory in nature and consequently a violation of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA).

Specifically, New Hampshire's policy for special education teachers did not meet the requirements of NCLB in the following areas:

1. It permitted teachers providing instruction in academic subjects to be exempt from the "highly qualified teacher" requirements if the "teacher of record" is highly qualified. "Teacher of record" was defined as the teacher who gives the student his or her grade.
2. Teachers of "substantially self contained classrooms" (that serve students more than 50 percent of the day) were considered highly qualified if they held a categorical certification in Mental Retardation, even if those teachers were providing direct instruction in core academic subjects.

Because NCLB calls for all students to meet State standards, the law requires all teachers of core academic subjects to be highly qualified in those subjects. NCLB also requires their teachers to have knowledge of the content that students need to master in order to be

proficient. The vast majority of special education students are expected to meet State standards that apply to students who are not disabled and to be assessed accordingly.

In our Title II, Part A guidance we have outlined the circumstances under which a special education teacher may not need to meet the highly qualified teacher requirements:

What activities may special education teachers carry out if they are not highly qualified in the core academic content area being taught?

There are many activities that special education teachers may carry out that would not, by themselves, require those teachers to be highly qualified in a particular subject matter. Special educators who do not directly instruct students in any core academic subjects or who provide only consultation to highly qualified teachers of core academic subjects in adapting curricula, using behavioral supports and interventions, or selecting appropriate accommodations do not need to demonstrate subject-matter competency in those subjects. These special educators could also assist students with study skills or organizational skills and reinforce instruction that the child has already received from a highly qualified teacher in that core academic subject.

States and districts should consider the needs of special education teachers as they implement *Title II, Part A*, particularly for activities that relate to professional development and reform of teacher certification or licensing procedures. By coordinating the use of resources from other Federal programs, such as the Individuals with Disabilities Education Act (IDEA), States can ensure that *Title II, Part A* funds are used effectively to help establish a coherent and comprehensive system that supports teacher quality. [*Improving Teacher Quality State Grants: Non-Regulatory Guidance, January 16, 2004, item C-27*].

As stated at the beginning of this letter, this letter is to confirm that you have changed State policy for all special education teachers in order to meet the requirements of the law, consistent with our guidance. You have revised the memo and you communicated the new policy to districts in your State on August 26.

Since all newly hired teachers in Title I schools must meet these requirements immediately and do not have until the 2005-06 school year to become highly qualified, New Hampshire has agreed that no teachers of core academic subjects will be hired to teach in Title I schools that do not meet these requirements. In addition, all special education students in Title I schools must receive their instruction in core academic subjects from highly qualified teachers. Consequently, New Hampshire will need to address the issue of new teachers who have already been hired to teach in Title I schools and do not meet the NCLB requirements for highly qualified teachers. Based on our conversation, our understanding is that such teachers were to have been reassigned prior to the beginning of this school year, or will otherwise need to become highly qualified in the subjects that they teach. Furthermore, in accordance with Section 1111(h)(6) of the

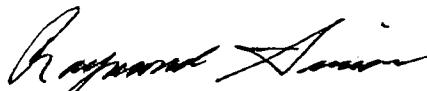
statute, Title I schools must notify parents of students whose teachers do not meet the statutory requirements for highly qualified.

Teachers are the single most important factor in improving student achievement. We are committed to ensuring that all teachers teaching core academic subjects are highly qualified, especially teachers in poor and disadvantaged areas. Responsibility for improving teacher quality lies not only with the States, but also with the U.S. Department of Education. We will make every effort to support you in your efforts through our monitoring process. As part of our technical assistance and monitoring of the Title I, Part A, and Title II, Part A programs and the highly qualified teacher provisions of the law, we will be looking at how New Hampshire has implemented its requirements and ensured that all students in Title I schools are taught by highly qualified teachers.

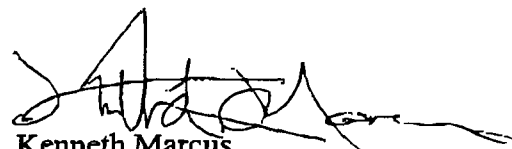
Because New Hampshire has modified its procedures, the Office for Civil Rights will contact Ms. Heath to inform her that absent further information from her, we believe that the Section 504 and ADA Title II issues she has raised to OCR have been resolved.

In order to ensure that all students reach high academic standards, we cannot settle for less when it comes to educating students with disabilities. We appreciate your recognition of the need for New Hampshire to modify its policy to conform with the law, and that you did so in a timely fashion. Please do not hesitate to contact us if you require any additional assistance or information.

Sincerely,



Raymond Simon
Assistant Secretary for
Elementary and Secondary



Kenneth Marcus
Delegated the authority of
Assistant Secretary for
Civil Rights