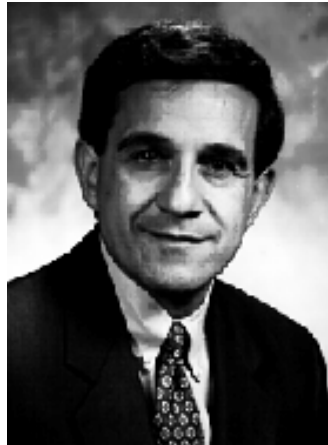




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Commissioner's Update

September 8, 1997

Dear Superintendents and Charter School Leaders:

I know that these are busy weeks, and I have tried to include in this packet only those items which I believe many of you will be interested in receiving early in the school year. Still to come in the next several weeks will be the history/social science curriculum framework, the application form and guide to recertification, and the Department of Education professional development calendar.

In this mailing I have included the following materials:

1. Charter school application, laws, and proposed regulations
[No longer available]
2. [Request for nominees for certification review panel](#)
3. 1997-1998 Attracting Excellence to Teaching loan forgiveness application
[No longer available]
4. FY 97 state wards reimbursement memorandum and backup materials
[No longer available]
5. [Guidance on Individuals with Disabilities Act amendments](#)
6. Summary of transitional bilingual education statutes and regulations
[No longer available]
7. Copy of materials for high school and middle school administrators and guidance counselors from the Board of Higher Education on new state admissions standards
[No longer available]
8. Conference invitations:
 - a. Technology conferences (October dates)
 - b. Literacy in Primary Grades (October and November dates)[No longer available]
9. Notification of state employees' school volunteer program
[No longer available]
10. Request for Superintendent data update
[No longer available]

Please note that the Department's website address has changed, and we are now located at <http://www.doe.mass.edu>. Nearly all materials we produce are posted on the website. Our area code in Malden has changed, too, and you can reach us at 781-338-3000.

I very much appreciate your leadership and the work you are doing on behalf of public education. I look forward to seeing many of you and keeping in touch with all of you in the months ahead.

Sincerely,

Robert V. Antonucci
Commissioner of Education

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Certification Review Panel

September 5, 1997

Dear Colleagues:

As you may know, the Certification Review Panel for certifying prospective educators in Massachusetts has been in operation since 1987. Its purpose as stated in the state regulations is to "provide an alternative route to certification for candidates with substantial experience and formal education relevant to the certificate sought but who do not meet all of the specific certification requirements listed in 603 CMR 7.10." This alternative route has recently been expanded to include a portfolio review, which in many cases is followed by a review panel interview.

The Certification Review Panel increases flexibility in the educator certification process and has been well received. Many certification candidates have applied through this route. We now review about forty applications each month. As a result, I am now seeking to appoint additional members to the Certification Review Panel. Panel members are certified and experienced public school administrators and teachers, and college professors, who serve for five year terms and volunteer their time for up to one day per month to conduct candidate interviews and make recommendations for certification.

If you are interested in panel membership, or if you would like to nominate a veteran administrator or teacher, please send a letter of interest or nomination with a resume to me during the next month.

Thank you for your assistance with this matter. I look forward to welcoming new members to the Certification Review Panel, and keeping this alternative route to certification an option for experienced professionals.

Sincerely,

Robert V. Antonucci
Commissioner of Education

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Special Education

Memorandum

TO: Superintendents, Charter School Leaders and Other Interested Parties

FROM: Robert V. Antonucci, Commissioner of Education

DATE: September 3, 1997

RE: [Guidance on Special Education Requirements](#)
 Changes in the federal special education law and how these changes affect school district practices for students with disabilities. (Advisory SPED #98-001)

On June 4, 1997 President Clinton signed into law Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997 (IDEA-97). Many key provisions took effect immediately. The new law changes several longstanding requirements of the federal special education law. It also emphasizes the need to provide appropriate educational services to students with disabilities in order to improve educational results for these students. This advisory provides guidance on how IDEA-97 will affect school programs in Massachusetts during the 1997-98 school year.

This advisory addresses only those new provisions of the law to which the Massachusetts Department of Education believes school districts should pay immediate attention. We will provide opportunities for training on IDEA-97 in October 1997. As soon as good printed copies are available, the Massachusetts Department of Education will provide a complimentary copy of the full text of the law to each school district. In the meantime, we recommend that school officials review the entire statute. IDEA-97 is currently available on the Internet in a downloadable format at:

http://www.ed.gov/offices/OSERS/IDEA/the_law.html

The Office of Special Education Programs of the U.S. Department of Education is preparing regulations for IDEA-97 that are expected to be proposed in September and in effect in about one year. We will inform school officials when more detailed guidance is available from the U.S. Department of Education.

This advisory provides specific language from selected sections of the statute along with guidance on actions that are reasonable to implement the new statutory requirements.

SECTION 601 of IDEA-97 - SHORT TITLE; TABLE OF CONTENTS; FINDINGS; PURPOSES.
--

Section 601 contains the title, contents, Congressional findings, and the purposes of the law. This section is compelling as a reminder of the philosophical, ethical, and educational bases for this statute. The first finding states:

(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children

with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

Section 601 includes Congressional findings that the education of children with disabilities can be made more effective by:

- having high expectations for such children and ensuring their access to the general education curriculum to the maximum extent possible
- strengthening the role of parents and families
- coordinating the IDEA-97 with other local, state and federal school improvement efforts to ensure that children benefit from them and that special education is a service rather than a place to which children are sent
- providing special education and related services, aids and supports in the regular classroom whenever appropriate
- supporting high quality intensive professional development for all personnel who work with children
- providing incentives for whole-school approaches and pre-referral intervention, and
- focusing on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.

SECTION 602 of IDEA-97 - DEFINITIONS.

Section 602(26) defines the term "Specific learning disability" and includes this statement from the existing regulations:

Such term does not apply to students who have learning problems that are primarily the result of...environmental, cultural, or economic disadvantage.

IDEA-97, and the Congressional committee report that accompanied it, caution against mislabeling and over identifying students as needing special education. We have asked the U.S. Department of Education to provide guidance on how schools should implement this provision, as well as this related provision in Section 614(b)(5) relating to eligibility for special education:

... a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

While we await further guidance from the U.S. Department of Education, we advise schools to consider these factors carefully when making determinations about a student's eligibility for special education services.

SECTION 611 of IDEA-97: FUNDING

This section relates to the formula generating federal funds for the states and how states use these funds. Although there are many changes in this section, they do not take effect immediately. We will provide guidance on the impact of these changes at a later date.

SECTION 612 of IDEA-97: STATE ELIGIBILITY

Section 612 (a)(5) --LEAST RESTRICTIVE ENVIRONMENT -- IDEA-97 has added a new provision that requires states to ensure that any state funding formulas that are based on the type of

setting in which students are placed do not result in placements that violate the requirement of "least restrictive environment." If a state funding formula is inconsistent with this requirement, the state must revise the funding formula as soon as feasible. This new provision affects the Massachusetts funding program known as the "50/50" account, which provides state assistance for residential school placements. The Massachusetts Legislature is aware of this new provision of IDEA-97. The Massachusetts Study Commission for Special Education and the House Working Group on Special Education have proposed meeting the requirement by changing the 50/50 account to an account that provides reimbursement for higher cost students whether their special education is being provided within the public schools or out-of-district. This proposal may be included in the state budget for 1998-99. We will keep you informed about the progress and impact of such a proposal.

Section 612 (a)(9) --TRANSITION FROM PART C TO PRESCHOOL PROGRAMS -- IDEA-97 retains prior law requiring the state to have policies and procedures to ensure a smooth transition for young children with disabilities from the Early Intervention Program (now called Part C, formerly Part H) to early childhood special education programs at age 3. IDEA-97 adds that the transition must be "effective" and also requires school districts to participate in transition planning conferences arranged by the lead agency for Part C. In Massachusetts the lead agency is the Department of Public Health (DPH). The DPH is aware of this new responsibility. Schools should make every effort to participate in transition planning conferences, and to initiate activities for a smooth transition of each student in cooperation with Early Intervention program providers.

Section 612 (a)(3) & (10) --CHILDREN IN PRIVATE SCHOOLS -- IDEA-97 has added considerable detail to the responsibilities for finding and serving students with disabilities who are attending private schools and to the funding of services to such students. Public schools continue to have full responsibility to provide and pay for services to students in private special education schools when the public school has made the placement.

Following are relevant excerpts from IDEA-97 relating to students in private schools, followed by our summary of these provisions:

Section 612(a)

(3) CHILD FIND.-- All children with disabilities residing in the State, including children with disabilities attending private schools...and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

...(10)(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS.--...provision is made for...providing for such children special education and related services in accordance with the following requirements...:

(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under [Part B of IDEA-97]

(10)(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OR REFERRAL BY THE PUBLIC AGENCY.--

(I) IN GENERAL.-- [IDEA-97] does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT.-- If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents...

(iii) LIMITATION ON REIMBURSEMENT.-- The cost of reimbursement described in clause (ii) may be reduced or denied--

(I) if...the parents did not [either] inform the IEP Team [at the most recent IEP meeting] that they were rejecting the [proposed placement], including stating their concerns and their intent to enroll their child in private school at public expense; or 10 business days ...prior to the removal of the child from the public school, the parents did not give [such] written notice to the public agency...

(II) if, prior to the parents' removal of the child from public school, the public agency informed the parents...of its intent to evaluate the child...but the parents did not make the child available for such evaluation; or
(III) upon a judicial finding of unreasonableness...by the parents.

(iv) EXCEPTION.--...the cost of reimbursement may not be reduced or denied for failure [by the parent] to provide such notice if--

- (I) the parent is illiterate and cannot write in English;
- (II) compliance...would likely result in physical or serious emotional harm to the child;
- (III) the school prevented the parent from providing such notice; or
- (IV) the parents had not received notice...of the notice requirement...

Within the next month we will send to school officials an addendum to the existing notice of procedural safeguards that is currently provided to parents, to address these requirements and others. In the meantime, school districts should be aware of these new federal requirements, which we summarize as follows:

(1) Child find; counting students with disabilities who are in private schools: Students with disabilities who are attending private schools, including students placed by their parents in regular day private schools (e.g., independent or parochial schools), as well as students with disabilities who are attending private special education schools, are to be included in "child find" under IDEA-97. School districts are obligated to conduct child find activities in all private elementary and secondary schools located within their geographical jurisdiction. We encourage school districts to update their child find procedures accordingly, and to develop agreements with local private schools so that the procedure is as efficient as possible. We will work with the Massachusetts Association of Approved Private Schools to ensure their organizational commitment to this requirement. We will be requesting school districts to submit their updated child find procedures in the spring of 1998.

(2) Public funding for special education services provided to students with disabilities placed by their parents in private schools: Under IDEA-97, students who are enrolled by their parents in private (including independent and parochial) elementary and secondary schools, and who have a disability, are eligible to receive services through the school district's federally-funded special education program, but the law now specifies that the school district is not required to spend for this purpose more than a proportionate share of the federal funds made available to the district under Part B of the IDEA-97.

Example: A district served and, therefore, "counted" in last year's December count ten (10) students with disabilities who were enrolled in the parochial school located in the town. The federal share of Part B funds provided to school districts was calculated at \$405/counted student for school year 1997-98. Therefore, the district received \$4,050 in relation to those 10 students. If the district spends at least \$4,050 serving students in that parochial school in 1997-98, the district will have met its obligation under IDEA-97.

IDEA-97 clarifies that private school students do not have an individual entitlement to publicly-funded special education services. They have a "group entitlement," limited to the amount of federal Part B funds attributable to private school students with disabilities in the district. We suggest that districts enter into agreements with local private schools about the types and amounts of special education services that will be made available during the coming school year.

IDEA-97 also states that federally-funded special education services may be provided to students on the premises of the private or parochial school, if state law so permits. Use of federal funds for this purpose is permissible under the Anti-Aid Amendment to the Massachusetts Constitution, which restricts the use of state or local funds to "found, maintain or aid" a private school. IDEA-97 does not require school districts to expend state or local funds to serve students in private schools. Any school district that chooses to use state or local funds to provide additional special education services to students attending private or parochial schools should provide the services at the public school or some other appropriate site.

(3) Reimbursement for parent's unilateral placement of student in a private special education school: IDEA-97 states that a school district is not required to reimburse a parent who unilaterally places a student in a private special education program, unless a hearing officer or a court determines that the school district failed to provide a free appropriate public education to the student and that the private school does so. Further, reimbursement for a private placement may be reduced or denied if the parent failed to give prior notice to the school as required by Sec. 612 (a)(10)(C)(iii) [see p. 4, above]; the parent failed to make the child available for evaluation; or the parent is otherwise found by the court to have acted unreasonably. School districts must alert parents of their obligation to provide prior

notice to the school of their intent to withdraw the student and place him or her in a private school; otherwise, the parent's failure to provide prior notice to the school will not be a bar to reimbursement.

Section 612 (a)(15) -- PERSONNEL STANDARDS -- IDEA-97 has added flexibility to the required personnel standards. It states that, in accordance with state law, regulations or written policy, paraprofessionals and assistants who are appropriately trained and supervised may assist in providing special education or related services. This practice is consistent with Massachusetts law. School districts that intend to use paraprofessionals or assistants for this purpose must ensure that they are appropriately trained and that they receive direct supervision from an appropriately certified or credentialed staff member on a regular basis. If a paraprofessional or assistant is to be involved in providing services to a student under an IEP, the school should so inform the parent when the IEP is developed.

Section 612 (a)(17) -- PARTICIPATION IN ASSESSMENTS -- IDEA-97 specifies that students with disabilities "must be included in general State and district-wide assessment programs, with appropriate accommodations, where necessary." This provision underscores Congress's intent to hold high expectations for students with disabilities and ensure their access to the general education curriculum to the maximum extent possible. The IEP Team is designated as the body responsible to consider how such students can participate and if an alternative assessment mechanism is needed.

Massachusetts began implementing the intent of this provision even before it was enacted, by including all students in the spring 1997 statewide Iowa tests at grade 3 and grade 10 unless they could not be tested even with accommodations. Every school district (including charter schools) planning district-wide student testing or assessment programs must take steps to include students with disabilities in those programs starting this year. Schools must ensure that IEP Teams discuss and document how eligible students will participate in state and district assessment programs, including the Grade 3 Reading Test planned for April 1998, and the Massachusetts Comprehensive Assessment System (MCAS) administration planned for May 1998. We plan to distribute to schools this fall an addendum to the IEP that can be used to document discussion about the student's participation. Additionally, we encourage schools to treat the question tryouts for English Language Arts (scheduled for November 1997) and History and Social Science (scheduled for May 1998) as statewide assessment and make efforts to have full participation of students with disabilities even though individual student results will not be reported for the question tryouts.

SECTION 613 of IDEA-97 -- LOCAL EDUCATIONAL AGENCY ELIGIBILITY

Section 613(b) -- EXCEPTION FOR PRIOR LOCAL PLANS -- IDEA-97 allows school districts to submit their local plan for special education to the state education agency once and then does not require a full submission again. Therefore, we will no longer require three year plans. School districts will simply be required to provide updated information about changes in programs, policies or procedures.

SECTION 614 of IDEA-97 - EVALUATIONS, ELIGIBILITY DETERMINATIONS, IEPs, AND EDUCATIONAL PLACEMENTS

Section 614(a)(1) -- INITIAL EVALUATIONS -- IDEA-97 adds the requirement that an initial evaluation must, in addition to determining if the child is a child with a disability, determine the educational needs of the child. School districts should ensure that the required educational assessment provides information on the student's current educational status as well as the educational needs of the student. Evaluation reports should fully document activities and recommendations of evaluators.

Also, the statute permits the school district to seek to override a parent's refusal to consent to an initial evaluation by using the mediation and due process procedures available. The override provision in statute for initial evaluations is new to Massachusetts and allows school districts to advocate for the needs of a student if the school district believes that a parent's refusal to consent to an initial evaluation is not in the best interests of the student.

Section 614(b)(2) -- EVALUATION PROCEDURES--CONDUCT OF EVALUATION -- IDEA-97 requires that, in conducting an initial evaluation or reevaluation, the school district shall:

- (A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, **including information provided by the parent**, that may assist in determining whether the child is a child with a disability and the content of the child's

individualized program, **including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;...and...**

© use technically sound instruments that **may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.**

[emphasis added]

These new provisions also relate to Section 614(b)(5) about determining eligibility for special education. As noted on page 2 of this advisory, Section 614(b)(5) states:

... a child shall not be determined to be a child with a disability if the determinant factor ... is lack of instruction in reading or math or limited English proficiency.

These provisions emphasize the need for comprehensive evaluations and evaluation reports in order to provide effective and complete information to the Team as they consider eligibility decisions and plans for appropriate services.

Section 614[c] --*ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS*

-- IDEA-97 in Section 614[c] outlines the decisions the IEP Team is expected to make when reviewing evaluation information, including the type of disability, the student's present levels of performance and educational needs, and whether additions or modifications to the IEP are needed. As in other sections of IDEA-97, there is a continuing emphasis here on enabling the student to participate in the general curriculum.

One additional change in this section should be noted:

(4) REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED.-- If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency-

(A) shall notify the child's parents of--

(I) that determination and the reasons for it; and

(ii) the right of such parents to request an assessment...; and

(B) shall not be required to conduct such an assessment unless requested to by the child's parents.

The Congressional committee report states that this provision is intended to discourage "over-testing" of students. If the IEP Team and other professionals determine that the student's disability or needs have not changed appreciably since the previous assessment(s), or that the tests and assessments administered to the student by teachers and other service providers under the student's current plan are sufficient to develop a new IEP, then new assessments are not required unless the parent requests them. The school must notify the parent of its determination that new assessments are not needed and the reasons for it, and inform the parent of the right to request an assessment. Absent such a request from the parent, the Team may proceed to develop the IEP based on the existing data.

Section 614(d) -*INDIVIDUALIZED EDUCATION PROGRAMS*-- IDEA-97 continues to state familiar provisions regarding the need to develop and periodically review and revise the student's IEP. However, the statutory language contains new provisions related to the content of the IEPs, the conduct of IEP meetings and the required participants of the IEP Team. These changes take effect on July 1, 1998. The U.S. Office of Special Education Programs (OSEP) has advised us that any IEPs developed during 1997-98 for services to be provided in 1998-99, must meet the new requirements as of July 1, 1998. Therefore, school districts should be aware of the new requirements and begin implementation during this transition year. We are preparing guidance on the conduct of IEP meetings and the development of the IEP, and will distribute it during this school year. We will discuss the IEP requirements in more detail in October when we provide regional training sessions on the special education requirements under IDEA-97.

IDEA-97 emphasizes the Team's responsibility to consider the least restrictive environment appropriate for the student, and to provide for the student's access to the general curriculum. We recommend that school districts take steps to ensure that special education staff are familiar with the Massachusetts

curriculum frameworks and the learning standards contained in them as well as specific academic standards adopted by the school district.

SECTION 615 of IDEA-97 - PROCEDURAL SAFEGUARDS

Section 615(k) --PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING -- IDEA-97 contains detailed and prescriptive language relating to discipline (suspension/expulsion) of students with disabilities, including procedural requirements and standards for placement in an alternative educational setting. A copy of Section 615 (k) is attached to this advisory. This section of the federal law is effective immediately, and we recommend that you review it carefully. The Office of Special Education Programs of the U.S. Department of Education plans to issue guidance to state education officials in September on implementation of the new IDEA-97 provisions on discipline of students with disabilities. We will provide that information to Massachusetts school officials. In the meantime, please note these highlights:

(1) Continuation of services: Section 612(a)(1) states explicitly that a free appropriate public education must be provided to all children with disabilities of ages 3 through 21, "including children with disabilities who have been suspended or expelled from school." This means that although school districts may suspend students with disabilities for violations of the school discipline code (in accordance with the procedures and standards in Section 615(k)), a student who is excluded from the school setting must still be provided a free appropriate public education during the period of exclusion, whether or not the student's infraction was related to his or her disability. Unless we are advised otherwise by OSEP we understand this continuation requirement to apply only to students who are excluded for more than ten (10) days.

(2) Change of placement/exclusion for disciplinary reasons: Section 615(k) permits the school district to change the placement of a student with disabilities for disciplinary reasons, even over the parent's objection, as follows: (i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); (ii) to an appropriate interim alternative educational setting for up to 45 days for a student who carries a weapon to school or to a school function, or who knowingly possesses, uses, sells or solicits illegal drugs at school or at a school function; or (iii) to an appropriate interim alternative setting for up to 45 days upon order of a hearing officer who determines, according to the standards in Section 615(k)(2), that the student's current placement is substantially likely to result in injury to the student or others.

(3) Behavioral assessment/intervention plan: Within 10 days of the change of placement, the school district must convene the IEP Team to develop or review a "behavioral intervention plan" for the student. Rather than waiting until a disciplinary offense occurs, we recommend that each school district conduct a functional behavioral assessment and develop a behavioral intervention plan for any student with disabilities for whom problematic behavior is an issue. This assessment and development of a plan should be documented in the student's record, included in the IEP and agreed to by the parent. During this process the Team can also consider what alternative educational settings would be appropriate if an alternative program is needed during the course of the year. In this way, the parent and student may be informed about disciplinary procedures, rights in the process, and possible outcomes.

(4) Standards for interim alternative setting: The interim alternative educational setting to which a student may be removed for disciplinary reasons must (i) be determined by the IEP Team; (ii) enable the student to continue participating in the general curriculum and receiving services in the current IEP; and (iii) include services and modifications designed to address the student's behavior problems.

(5) "Manifestation determination review": Within 10 school days after the school decides to change the student's placement for disciplinary reasons, it must convene the IEP Team to determine if the misconduct was a manifestation of the student's disability, and must notify the parents of their procedural rights. If the Team determines that the misconduct is a manifestation of (i.e., connected to) the disability, the school cannot suspend the student, but must initiate the regular process for change of placement. If the Team determines the misconduct is not connected to the disability, the school may suspend the student but must provide services in an interim alternative educational setting. Section 615(k)(4) through (7) describes the process and standards for the manifestation determination and the parent's right of appeal.

(6) Students not yet determined to be eligible for special education: IDEA-97 specifies that in certain circumstances, students who are in the regular education program and have not been determined to need special education may still be covered by the IDEA-97 procedural protections relating to suspension/expulsion. Please refer to Section 615(k)(8) in the Attachment. Note also that a regular

education or special education student who has been suspended or expelled is entitled to receive a special education evaluation if requested.

(7) Reporting of crimes: Section 615(k)(9) specifies that nothing in IDEA-97 prohibits a school district from reporting a crime to appropriate law enforcement authorities.

These new federal requirements bear careful review by school personnel. While we await further guidance from the U.S. Department of Education, we recommend that you read Section 615(k) in its entirety and consider what steps should be taken to enable the district to ensure a safe school environment that meets the applicable legal standards. One such step would be for IEP Teams to conduct a functional behavioral assessment and develop a behavioral intervention plan, if they have not already done so, for every student with disabilities for whom problematic behavior is an issue. A second step is to consider generally whether the school discipline code should be reviewed. Third, school districts should consider how best to meet the requirement to provide interim alternative educational services to students with disabilities who have been excluded from the school setting for disciplinary reasons.

Section 615(m) -- TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY -- When a student reaches the age of majority (18 in Massachusetts), the procedural rights for special education transfer to the student. The previous federal law was ambiguous on this point. IDEA-97 specifies that if the school district intends to transfer those rights, notice must be provided to the student and the student's parents. (The section on development of the IEP makes clear that such notice should be provided at least one year before the student turns 18.) IDEA-97 allows the state to decide if the parent or another appropriate individual should be appointed to represent the educational interests of a student who has been determined unable to provide informed consent, without a formal court procedure determining the student to be incompetent. We expect to address this issue in proposed revisions to the Chapter 766 Regulations this fall.

IN CONCLUSION, over the next several months the Massachusetts Department of Education will provide additional guidance on implementing IDEA-97, including the new requirements for developing the IEP, and disciplinary procedures. We will provide periodic updates about IDEA-97 as we receive more information from the U.S. Department of Education. Also, we are developing addenda to the Notice of Procedural Safeguards and to the IEP form to meet the requirements of the new law, and we will provide those forms to school districts.

We anticipate that the Massachusetts special education law and the Chapter 766 Regulations will be revised during this school year. Later this fall we will present proposed amendments to the state regulations to the Board of Education for initial review, which will be followed by a period of public comment. The amended state special education regulations will be adopted and in effect by the beginning of the 1998-99 school year. The Department of Education will provide opportunities for training in both federal and state requirements and will convene interested parties to assist in the revision of any required forms or documentation.

If you have any questions about this advisory, please contact the Department of Education at (781) 338-3000.

Attachment: Section 615(k)

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