

Dated August 11, 2000

Ms. Joanne C. Holmes
Department of Education
23 State House Station
Augusta, Maine 04333-0023

Dear Ms. Holmes:

Thank you for your two letters dated November 2, 1999 and January 18, 2000 in which you asked, as Chair of the Legislative Committee of the Federal Interagency Coordinating Council (FICC), for clarification about certain functions of the FICC. This response will address both of your inquiries, as well as a number of items that are related to your inquiry about document dissemination by the FICC.

In your letter of November 2, 1999, you asked if there are any Federal laws that apply to the FICC which would provide guidance on the dissemination of documents which are considered by the FICC.

As you know, the FICC's statutory authority, section 644 of the Individuals with Disabilities Education Act (IDEA), governs its membership, functions, and other matters. Requirements of the Federal Advisory Committee Act do not apply to the establishment or operation of the FICC. In addition, there are no specific regulations governing the FICC under 34 CFR Part 303.

Documents may be disseminated by the FICC to two different audiences: (1) governmental agencies, and (2) the general public. In addition, documents disseminated by the FICC, which is a recipient of Federal funds, may need to comply with applicable requirements governing the use of the Department's seal and FICC logo, and the Federal prohibitions against the appearance of lobbying. These issues are also addressed below.

a. FICC documents disseminated within the Federal government

The statute authorizes the FICC with a number of functions related to advising and assisting the Secretaries of Education, Health and Human Services, Defense, Interior, Agriculture, and the Commissioner of Social Security in performing their duties related serving children ages birth through 5 with disabilities. The FICC can conduct policy analyses of relevant Federal programs, identify strategies to address issues in areas of conflict or duplication by Federal programs and encourage interagency collaboration. IDEA §§644(d)(1)-(4). Given these possible activities, it is likely that the FICC will make recommendations to the various Secretaries of Federal agencies through documents including joint policy memoranda. While there are no specific regulations governing the dissemination of FICC documents to governmental agencies, any documents presented as the FICC's position or recommendation should be approved by the FICC through its internal procedures.

If a proposed FICC position or recommendation concerns a particular Federal agency, the representative from that agency may be unable to vote under the FICC's statutory conflict-of-interest prohibition. This prohibition provides that no member may vote on a matter that would provide direct financial benefit to him or her or otherwise give the appearance of a conflict-of-interest under Federal law. Additional internal FICC conflict-of-interest provisions may also apply. Even if these prohibitions are not implicated, Federal agency members may still need to obtain their respective agencies' approval to support FICC positions or recommendations, and/or to disseminate documents within a particular governmental agency.

b. FICC documents dissemination to the general public

Section 644 of the IDEA also authorizes the FICC to "coordinate technical assistance and disseminate information on best practices, effective program coordination strategies, and recommendations for improved early intervention programming for infants and toddlers with disabilities and their families and preschool children with disabilities..." IDEA §644(d)(5). Because these activities are considered in the context of advising and assisting the named Secretaries, dissemination of any such materials would need to be approved by the participating agencies.

In addition, any correspondence to be sent out under the auspices of the FICC, including the FICC's website, must be issued through the FICC's own internal procedures governing approval and issuance of correspondence, including review and approval by Federal agency members.

c. Use of Department(s) seal(s) and FICC logo

While your inquiry did not specifically address the use of the Department of Education's seal or the FICC logo, these issues are related to correspondence that may be disseminated by the FICC. The Department of Education's seal, or the seal of any other Federal agency can only be used on any FICC correspondence or other document with the official prior approval of the relevant Federal agency. The use of the FICC logo on FICC documents including correspondence must be approved by the FICC.

d. Clarification of Lobbying

In addition, when documents are distributed using Federal funds or developed by entities receiving Federal funds, issues of lobbying of Congress may arise. The FICC is not authorized by statute to make recommendations to, or communicate directly to Congress, and the use of Federal funds to do so indirectly (e.g., by contacting members of the public to encourage "grass-roots" lobbying) is prohibited by Federal law.

In your letter of January 18, 2000, you asked the following three questions related to the Department's efforts for the next reauthorization of the IDEA. I certainly appreciate the Legislative Committee's offer to support the Department in its next reauthorization efforts. I also encourage the Committee, as well as the FICC, to be equally involved in

the reauthorization of other agency's programs that support and impact the lives of our young children with disabilities and their families.

a. Does the Department have tentative or proposed plans to approach the reauthorization of IDEA?

No, at this time the Department does not have a specific proposed plan to address the next Congressional reauthorization of the IDEA, which is expected to begin in 2002. Please note that Federal requirements prohibit the Department from sharing any agency proposed legislation with outside parties until it receives approval from the Office of Management and Budget (OMB). *See*, OMB Circular A-19. As part of its Federal review process, OMB circulates proposed legislation by one Federal agency to other affected Federal agencies. Our Federal agency partners are welcome to comment on proposed legislation through the OMB process.

b. How can the FICC (Legislative Committee) be utilized to support the Department and the reauthorization?

I am pleased that the Legislative Committee of the FICC is taking a proactive approach to the next reauthorization of the IDEA. During a prior reauthorization of the IDEA, the FICC played an important role in soliciting valuable information about the implementation of both Part C and the Preschool Grants program by hosting a public hearing in Washington, D.C.

c. What type of input should other FICC member agencies have on the FICC's recommendations regarding IDEA reauthorization?

I would certainly welcome, and encourage, any suggestions that FICC members may have for improving services to children under the IDEA. From an interagency perspective, I believe that information about the., impact of various federally-funded programs on services to our young children with disabilities and their families will be very important in the next reauthorization. The presentation of hard data will also be very important.

As you know, I am particularly interested in how the IDEA involves families as meaningful and full participants in all aspects of decision- making about their child. I often hear from families about the challenges they, and the service systems they rely on, encounter in obtaining quality coordinated services (educational/developmental, health/medial and social services) that are family-friendly and community-based.

Finally, as indicated earlier, while the Department is not permitted to share any proposed legislative drafts with the public, we welcome the FICC's comments on agency-proposed legislation once it is available for public comment.

I hope this letter provides some answers that may continue to guide the FICC, and particularly the Legislative Committee. Again, I appreciate the Legislative Committee's

offer of assistance. If you have any further questions, please contact Bobbi Stettner-Eaton, the Executive Director of the FICC at (202) 205-8828, or JoLeta Reynolds at (202) 205-5507.

Sincerely,

Signed Judy

Judith E. Heumann
FICC Chair

cc: Hedy Hansen Chair - FICC Communications Committee
Jean Johnson Chair - FICC Finance Committee
Mark Smith, Chair - FICC Family Empowerment Committee