



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP - 3 1998

Rodney J. Trahan
Member of Acadia Parish School Board
188 Soldier Rd.
Rayne, Louisiana 70578-7526

Dear Mr. Trahan:

Thank you for your letters written to Secretary of Education Richard W. Riley and to Assistant Secretary Judith E. Heumann, dated July 15, 1998, concerning inclusion and discipline for students with disabilities.

In your letters, you refer to "§504 of the Individuals with Disabilities Education Act." Let me start by clarifying that there are three Federal laws that govern the education of disabled students: Part B of the Individuals with Disabilities Education Act (Part B of IDEA); Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act (Title II of the ADA). The first is administered by the Office of Special Education Programs (OSEP), and the latter two are enforced by the Department's Office for Civil Rights (OCR). Section 504 and Title II of the ADA prohibit discrimination on the basis of disability and require school districts to provide a free appropriate public education in accordance with the regulations at 34 CFR §§104.33-104.36 to qualified individuals with disabilities.

It is possible that the students prompting your inquiry are covered only by Section 504 and Title II of the ADA because they do not need special education as a result of their impairments, but need only related aids and services. If you would like more information about Section 504 and Title II of the ADA, you should contact the named OCR official at the following address and telephone number:

Taylor D. August, Regional Director
U.S. Department of Education
Office for Civil Rights, Region VI
1200 Main Tower Building, Suite 2260
Dallas, Texas 75202-9998 Telephone - (214) 880-4913

Students who are eligible for special education and related services under Part B of IDEA would also be covered by the prohibitions against discrimination on the basis of disability in Section 504 and Title II of the ADA. States receiving Federal Part B funds must ensure that a free appropriate public education is made available to all resident children with disabilities in mandatory age ranges in the least restrictive environment (LRE). Part B's LRE principle expresses a strong preference, not a

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

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

mandate, for educating disabled students in regular class placements with appropriate supplementary aids and services. The Part B and Section 504 provisions regarding LRE are substantially similar.

In your letter you raise the issue of "inclusion." Federal law does not use the term "inclusion," which is commonly understood in the literature to mean that all children with disabilities attend their home school with their age and grade peers. Although inclusion is often used interchangeably with the LRE provisions, it is not the same. The overriding rule in any placement under Part B is that the child's placement must be individually-determined based on his or her unique abilities and needs. Recognizing that regular class placement may not be appropriate for every disabled child, the Part B regulations require that school districts make available a range of placement options, known as a continuum of alternative placements, to meet the unique educational needs of students with disabilities. 34 CFR §300.551(a). This requirement for the continuum reinforces the importance of the individualized inquiry, not a "one size fits . all" approach, in determining what placement is least restrictive for each student with a disability. The options on this continuum must include "instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions." 34 CFR §300.551 (b)(1). These options must be available to the extent necessary to implement the IEP Individualized Education Program] of each disabled student. 34 CFR §300.552 (b).

The placement team must select the option on the continuum in which it determines that the student's IEP can be implemented. While Part B does not require that every disabled child be educated in the regular classroom regardless of the child's needs, exclusion of a child with a disability from a regular class placement solely on the basis of his or her disability in situations where that placement is appropriate would violate Part B, Section 504, and Title II of the ADA.

In your letter, you also express concern that students with disabilities are not properly disciplined because of their status as disabled students. It has always been the position of this Administration that our schools must be safe, disciplined, and drug-free. The IDEA Amendments of 1997, Pub. L. 105-17 (IDEA '97) expand the authority of school officials to protect the safety of all children, while safeguarding essential rights of students with disabilities. We believe that the provisions in IDEA '97 strike an appropriate balance between the importance of providing a safe and orderly learning environment for all students, while safeguarding the rights of disabled students and their parents.

Page 3 - Rodney J. Trahan

As you may know, on October 22, 1997, the Department published in the Federal Register, at 62 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement statutory changes to Part B made by IDEA '97. In response to the NPRM, numerous public comments were received, particularly in the area of student discipline. Many of the situations described in these public comments raise issues similar to those set out in your inquiry. Please be assured that the Department is considering the views expressed in these public comments very carefully as we identify areas that may warrant clarification or revision in the final regulations.

We appreciate your writing and bringing your concerns to our attention.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Hehir", followed by a small mark that looks like a stylized "12" or a flourish.

Thomas Hehir
Director
Office of Special Education
Programs

cc: Ms. Virginia Beridon
Louisiana Department
of Education