



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 4 2000

[REDACTED]

Dear [REDACTED]

Your letter of September 17, 1999 to President Clinton was forwarded to the U.S. Department of Education, Office of Special Education Programs (OSEP), which administers Part B of the Individuals with Disabilities Education Act (IDEA) revised by the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97).

In your letter, you mention situations where [REDACTED] where [REDACTED] an aide working with students with disabilities, has been "probed and prodded, kicked, bit and hit," by mentally challenged children. As a result, you seek answers regarding the placement of these students and the safety of others around them.

It has always been the position of this Administration that our schools must be safe, disciplined, and drug-free. IDEA '97 expands the authority of school officials to protect the safety of all children, while ensuring that essential rights and protections are available to students with disabilities. Specifically, §615(k) of IDEA '97 addresses the options available to school authorities in disciplining disabled students and sets forth procedures that must be followed in taking disciplinary actions. A copy of that section is enclosed for your information. In fact, IDEA '97 provides a specific vehicle to school officials for dealing with students such as those prompting your inquiry.

We believe that the assessment of the seriousness of any potential threat should initially be conducted by those who are familiar with the student(s) and their disabilities. It is important to point out that a student's placement can be changed immediately if the school and parents are in agreement. This could be to a setting for assessment of the student's actions and emotional status. If the parents are in agreement with the placement proposal of the school district, no further procedural steps are required.

In situations where there is no parental agreement, school officials may exclude the student from school for up to 10 school days. School officials may also seek to unilaterally change the student's placement. Under §615(k)(3) of SEA '97, school officials may go to an expedited hearing to ask the hearing officer to place the student in an appropriate interim alternative setting for a period of up to 45 days if maintaining the current placement of the student is substantially likely to result in injury to the student or to others. Previously, only a court had that authority.

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In determining what placement would constitute the appropriate interim alternative educational placement for such students, the requirements of §615(k)(3) of IDEA '97 would apply. In such situations it is especially important that the student receive services and modifications designed to address the behavior that gave rise to the need to remove the child. See § 615(k)(3) (B)(ii).

We appreciate your concern for the specific situation that prompted your inquiry and the broader issue of appropriate services for children with disabilities while ensuring school safety for all. We hope you find this explanation helpful.

Sincerely,

Kenneth ft. Warlick
Director
Office of Special Education
Programs