



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB - 5 1999

Lucy S. Beauchamp
Chairman At-Large
Prince William County School Board
P.O. Box 389
Manassas, Virginia 20108

Dear Ms. Beauchamp:

Your letter dated December 7, 1998, written on behalf of the Prince William County School Board to Secretary of Education Richard W. Riley, regarding the disciplining of students with disabilities, has been referred to the Office of Special Education Programs (OSEP) for response. In your letter, you express the School Board's view that school officials are prohibited by the Individuals with Disabilities Education Act (IDEA) from removing students with disabilities from school, even though those students engage in misconduct that would warrant disciplinary action for nondisabled students. You describe a situation involving a student with a disability whom you state brought a knife to school, and an incident in which metal bats were left at a bus stop. Even though the student's misconduct was determined not to be a manifestation of her disability, you indicate that the student with disabilities was not expelled, but that the nondisabled student involved in the incident was expelled from school.

In light of this situation, you suggest the need to amend the law to ensure safe schools and equitable treatment of all 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 ensuring that essential rights and protections are available to students with disabilities.

Because it appears from your letter that you may not be fully aware of all of the options available to school authorities in disciplining students with disabilities, I would like to take this opportunity to provide a brief summary of some of the major provisions in IDEA '97 relevant to student discipline. A copy of IDEA '97 is enclosed for your information.

IDEA '97 permits school authorities to remove a child with a disability from the child's regular placement for not more than

ten school days at a time for any violation of school rules. Additional ten-day suspensions can occur in the same school year for separate incidents of misconduct, as long as there is not a pattern of removals that would constitute a change in placement and educational services are not ceased.

In situations where there is a serious infraction of school rules and the child's parents agree (as they frequently do in such cases), school officials can move a child with a disability to an appropriate placement. In situations where the child's parents do not agree, IDEA '97 permits school authorities to remove a child with a disability from the child's regular placement for up to 45 days at a time if the child brings a weapon to school or to a school function, or knowingly possesses or uses illegal drugs or sells or solicits controlled substances while at school or a school function. In addition, if a child with a disability is substantially likely to injure self or others in the child's regular placement, school officials can ask an impartial hearing officer to order that the child be removed to an alternative setting for a period of up to 45 days.

We believe that the .45-day duration for alternative educational placements is a good time line for reviewing a child's status, including the likelihood of future behavioral incidents. If, by the end of the 45-day period, school officials believe that the child would be dangerous if returned to the regular placement, they can ask an impartial hearing officer to order that the child remain in an alternative placement for an additional 45 day period. If necessary, school officials can also request subsequent extensions of these alternative placements.

If, following a review of the child's disability and the behavior which caused the disciplinary action, it is determined that the behavior of the child was not a manifestation of the child's disability, the disciplinary procedures applicable to children without disabilities may be applied to the child. This means that if non-disabled children are suspended or expelled for a particular violation of school rules, the child with disabilities may also be suspended or expelled. However, under IDEA '97, educational services may not cease for those disabled students who have been suspended or expelled from school. During periods of suspension or expulsion for behavior that is not a manifestation of the student's disability, appropriate educational services may be provided in some setting other than the student's prior school assignment. See §612(a)(1)(A) of IDEA '97.


age 3 - Lucy S. Beauchamp

At any time, school authorities may seek to obtain a court order to remove any student with a disability from school or to change the student's regular educational placement if the school district believes that maintaining the student in the regular educational placement is substantially likely to result in injury to the student or to others. Honig v. Doe, 108 S.Ct. 592, 606 (1988) .

We believe that IDEA '97 expands options: for school authorities in disciplinary situations. We would not support amendments that would lessen the rights afforded by IDEA '97 to students with disabilities and their parents. We anticipate that final regulations implementing statutory changes made by IDEA '97 will be published shortly. These regulations should clarify options available to school authorities in disciplining students with disabilities.

I hope that you find the above explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Dr. Doug Cox
Virginia Department of
Education