



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 23 1998

Dear :

Thank you for your letter, written to the Office of Special Education and Rehabilitative Services' Assistant Secretary Judith E. Heumann. You requested clarification of the requirements of the Individuals with Disabilities Education Act (IDEA) regarding the provision of educational services to a student with a disability who is expelled from school for possession of marijuana at a school function when such conduct is determined not to be related to the student's disability.

In your letter, you ask the following: '

Must the general education curriculum (Math, English, Science, and History) be provided to a student who has been expelled. I am requesting the Policy that was in effect as of January 1997 and the Policy that will be in effect subsequent to the re-authorization of the IDEA.

Sections 612(a)(1)(A) and 615(k)(5)(A) of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), which were signed into law by President Clinton on June 4, 1997, codified the U.S. Department of Education's (Department) longstanding interpretation of IDEA that the right to a free appropriate public education (FAPE) includes students with disabilities who are suspended or expelled from school for conduct which is not a manifestation of their disabilities. On October 22, 1997, the Department published in the Federal Register, at 62 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement the statutory changes and clarifications in IDEA '97; we have enclosed a copy of the NPRM for your information. The Department accepted public comment on this NPRM through January 20, 1998, and is currently in the process of reviewing the public comments in preparation for publication of the final regulations.

The proposed regulations would require that a child with a disability who is suspended for more than ten school days in a school year or is expelled from school must continue to receive FAPE, even if the conduct is not a manifestation of the child's disability, and the child is otherwise disciplined as a non-disabled child would be disciplined. See Proposed 34 CFR 300.524(a). See also proposed 34 CFR 300.121(a).

In ensuring the provision of FAPE, IDEA '97 emphasizes the participation of a child with a disability in the general curriculum. The statute states that children with disabilities may be removed by school officials for bringing certain weapons or drugs to school for up to 45 days. These children must be placed in an interim alternative educational setting. IDEA '97, section 615(k)(1)(A)(ii). The determination of an alternative educational setting, made by the child's IEP team, must be "selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP ..." IDEA '97, section 615(k)(3)(B)(I). The proposed regulations would apply the same requirement to disabled students expelled from school or suspended for more than ten school days in a given school year. Proposed 34 CFR 300.121 (c) (requiring compliance with Proposed 34 CFR 300.522 in providing FAPE to children with disabilities who are suspended for more than 10 school days in a school year or expelled).

We would also like to bring to your attention that the question and answer document enclosed with your letter, which was written by David Egnor and Madeleine Will, was prepared prior to the passage of IDEA '97 and was not formally cleared by the Department.

We trust that you will find this explanation and the enclosed information helpful. If we can be of further assistance, please contact Ms. Delores Barber, the Alabama State contact in the Monitoring and State Improvement Programs Division, at (202) 205-9033.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc: Dr. Bill East
Alabama Department
of Education