



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB 4 2000

Honorable Ronnie Shows
House of Representatives
Washington, DC 20515

Dear Congressman Shows:

Scott Fleming, Assistant Secretary for Legislation and Congressional Affairs, U.S. Department of Education, referred your letter to the Office of Special Education and Rehabilitative Services (OSERS) for response. You are writing on behalf of several of your constituents from the Simpson County School District and its Superintendent about perceived disparate disciplinary actions for regular education and special education students. Specifically, you requested that the Department look at the effect of the rules and regulations implementing the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97).

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. While we recognize that there may be a few students who take unfair advantage of their status as disabled students in disciplinary situations, we believe that IDEA '97 strikes an appropriate balance between the essential rights of students with disabilities and their parents and school safety.

Perhaps an explanation of IDEA '97's provisions addressing discipline of students with disabilities may alleviate some of the concerns expressed by your constituents about the perceived disparate disciplinary treatment of students. IDEA '97 permits school authorities to remove a child with a disability from the child's regular educational 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 and the 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), schools 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. See: 34 CFR §.500.519 *et. seq.*

We believe the 45-day duration for alternative educational placements is a good timeline 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 educational 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 procedure 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. See: §§300.121(d) and 300.524. 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.

It has long been the Department's view that cessation of educational services for children with disabilities is not an effective punishment. Instead, providing these students an effective alternative program increases their chances of being productive, law-abiding members of the community. The Department believes that continued services are essential to ensure that disabled students who are subject to disciplinary exclusion from school do not fall further behind and are able to gain the necessary skills to modify their behavior once they return to school. At the same time, however, it is essential that schools remain safe and orderly places conducive to learning for all students.

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).

IDEA '97 also places a renewed emphasis on addressing the behavior of students with disabilities that interferes with learning. Under IDEA '97, in developing the individualized education program (IEP), "in the case of a child whose behavior impedes his or her learning or that of others [the IEP team] must consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior." See: 20 U.S.C. § 1414(d)(3)(b)(i). This provision applies whether or

not disciplinary action is contemplated. In addition, 20 U.S.C. § 1415(k)(1)(B)(i), provides that, "if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address the behavior." Further, 20 U.S.C. §1415(k)(1)(B)(ii) provides that, if a child is disciplined under the terms of 20 U.S.C §1415(k)(1)(A), and the child already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior, either before or not later than 10 days after taking disciplinary action in accordance with 20 U.S.C.

1415(k)(1)(A). If a local educational agency places a child in an appropriate interim educational setting for drug or weapon offenses described in 20 U.S.C. 1415(k) (1) and (2), the interim alternative educational setting must provide services and modifications designed to address the behavior giving rise to the interim placement so the behavior does not recur.

I hope that the above explanation is helpful in addressing the concerns of your constituents regarding the perceived disparate treatment in disciplining disabled and non-disabled students. If you would like further assistance on this issue, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education
Programs