



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Perry A. Zirkel

DEC - 7 1999

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111 Research Drive
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Dear Mr. Zirkel:

This is in response to your letter written to the Office of Special Education Programs (OSEP), in which you request clarification with regard to the following question:

Does the OSEP letter to Jean Rhys dated July 21, 1991, which explained that "the ten-day . suspension/expulsion 'clock' re-starts upon an IEP that changes the child's placement", remain valid after the 1999 IDEA regulations?

The final regulations implementing the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA'97) make clear the circumstances under which a child with a disability can be subjected to multiple removals from the current placement in the same school year. To analyze this issue, we would like to call the following regulatory provisions to your attention.

The regulation at 34 CFR §300.519 provides a definition reflecting the Department's longstanding interpretation of what is meant by a "change of placement" in the disciplinary context. With regard to what is meant by a change of placement in the context of disciplinary removals, the final Part B regulations provide as follows:

For purposes of removals of a child with a disability from the child's current educational placement under §§300.520-300.529, a change of placement occurs if

- (a) The removal is for more than 10 consecutive school days; or
- (b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

34CFR §300.519.

The regulation at 34 CFR §300.520(a) addresses both the situation raised in Ms. Rhy's inquiry as well as other situations in which a child with a disability could be subjected to more than one removal from the current placement in the same school year. Section 300.520(a)(1) of the final Part B regulations makes clear that multiple short-term removals of 10 consecutive days or less for separate incidents of misconduct are permitted, to the extent removals would be applied to

nondisabled children, as long as those removals do not constitute a change of placement in the disciplinary context. The preamble to the final Part B regulations, in an analysis of the disciplinary provisions, explains:

In addition, neither the statute or the proposed or final regulations impose absolute limits on the number of days that a child can be removed from his or her current placement in a school year. As in the past, school personnel have the ability to remove a child for short periods of time as long as the removal does not constitute a change of placement." 64 Fed. Reg. 12406, 12413 (Mar. 12, 1999).

However, in the case of disciplinary removals that occur beyond the first 10 school days in a school year, services must continue for children with disabilities, consistent with 34 CFR §300.121 (d) of the final Part B regulations. That regulation clarifies that a public agency need not provide services to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without a disability who has been similarly removed. For a child who has been removed from his or her current placement for more than 10 school days in that school year, the public agency, for the remainder of the removals, must provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP.

For disciplinary removals that occur beyond the first 10 school days in a given school year, the above standard applies regarding the provision of services, regardless of whether the removal is for less than ten school days at a time or, in cases where the behavior is not a manifestation of the child's disability, for more than ten consecutive days. While the same standard applies beginning with the eleventh school day that a child is removed from school in a given school year, what varies is who, i.e., school personnel in consultation with the child's special education teacher or the IEP team, makes the determination regarding the extent to which services are necessary to meet this standard. See 34 CFR §300.121(d).

I hope that you find this explanation helpful. If we can provide further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss, at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,

Patricia J. Guard
Acting Director
Office of Special Education
Programs