



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 8 1997

Your letter to President Clinton, dated October 14, 1997, has been forwarded to the U.S. Department of Education, Office of Special Education Programs (OSEP), for response.

As a teacher in the _____ Public School, you express your concern about what you believe to be the inability of school administrators to discipline disabled students. You also state that a student with an individualized education program (IEP) is currently protected from being expelled from school. This is not the case. Let me say unequivocally that it has never been the Department of Education's position that a student with a disability is exempt from discipline solely because of the student's status as a disabled student if the student's misconduct is not a manifestation of his or her disability.

It has always been the position of this Administration that our schools must be safe, disciplined, and drug-free. The Individuals with Disabilities Education Act Amendments of 1997 (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. Section 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 general, a school may change the placement of a disabled child to an appropriate interim educational setting, another setting, or suspension for up to 10 school days (to the extent such alternatives would be applied to nondisabled children). See IDEA '97, §615(k)(1)(A)(i).

Furthermore, §615(k)(1)(A)(ii) states that if a disabled student brings a weapon to, or knowingly possesses or uses, or sells or solicits the sale of, illegal drugs at school or a school

function, school personnel may order a change in the placement of the child to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days. In addition, under §615(k)(2), schools may go to a hearing officer for placement of a disabled student in an alternative educational setting for up to 45 days if the student is substantially likely to injure himself or others. Previously, only a court had that authority. Moreover, 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 nondisabled children are suspended or expelled for a particular violation of school rules, the child with disabilities may also be suspended or expelled. Note, however, that the statute requires that a free appropriate public education (FAPE) must continue to be provided to all disabled students, including those students who have been suspended or expelled from school. Section 615(k)(5)(A) of IDEA '97.

It is important to remember that prior to the enactment of special education legislation in 1975, most disabled children were receiving little, if any, appropriate education. The focus of the current law is for children with disabilities to be educated with nondisabled children in regular classes and in the general curriculum. Such focus is to help disabled children become independent and productive members of their communities. The law also includes provisions which seek to prevent the need for disciplinary action, such as IEP team consideration of strategies to address behavior which impedes a child's learning or the learning of others (§614(d)(3)(B)(i)), and inclusion of the regular education teacher on the IEP team (§614(d)(1)(B)(ii)). Note also that the IEP team must address the behavior that resulted in disciplinary action by developing a behavioral intervention plan, if one did not already exist, or reviewing and modifying, as necessary, an existing one. Section 615 (k) (1) (B) of IDEA '97.

For your information, I am enclosing an OSEP memorandum that provides initial guidance on the requirements of IDEA '97 as they relate to the discipline of children with disabilities. I also am enclosing the Department's Notice of Proposed Rulemaking on IDEA '97, which was published on October 22, 1997.

We hope that you find the above explanation and the enclosed information helpful in clarifying some of the discipline provisions of IDEA '97. If you would like further information,

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you may wish to contact the persons whose names and telephone numbers appear on OSEP Memorandum 97-7, or Ms. Helen Eano, your State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9583.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas Hehir", with a stylized flourish at the end.

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc:Mr. Robert Runkel
Montana Office of
Public Instruction