



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 17 1997

Honorable John Tanner
House of Representatives
Washington, D.C. 20515-4208

Dear Mr. Tanner:

Your letter, dated September 22, 1997, written to the U.S. Department of Education's Office of Legislation and Congressional Affairs, concerning the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), has been referred to the Office of Special Education Programs (OSEP) for response. OSEP administers Part B of the Individuals with Disabilities Education Act (Part B). Part B, the Federal law that guarantees disabled students equality of educational opportunity, was reauthorized by IDEA '97.

In your letter, you ask whether "a student who meets the definition of 'disabled' under IDEA, and who commits an act of violence at school that is determined not to be related to his disability, can be expelled from school and receive no educational services for a calendar year . . . "

Both prior to and after the enactment of IDEA '97, it has been the Department's position that the Gun-Free Schools Act applies to students with disabilities and must be implemented consistent with laws applicable to the education of students with disabilities. The Gun-Free Schools Act states, among other requirements, that each State receiving Federal funds under the Elementary and Secondary Education Act shall have in effect a State law requiring local educational agencies to expel from school for not less than one year a student who brings a firearm to a school under the jurisdiction of local educational agencies in that State, except that the State law must allow the local educational agency's chief administering officer to modify the expulsion requirement for a student on a case-by-case basis. The Act does not prevent a local educational agency from providing educational services to students who have been expelled in an alternative setting. Most importantly, the Gun-Free Schools Act explicitly states that the Act must be construed in a manner consistent with the IDEA. 20 U.S.C. §8921. As stated above, the Department's position continues to be that compliance with the Gun-Free Schools Act can be achieved consistent with the requirements that apply to students with disabilities as long as discipline of such students is determined on a case-by-case basis in accordance with IDEA '97.

As a condition of eligibility for receipt of funds under Part B of IDEA '97, a State must have policies and procedures that ensure that a free appropriate public education (FAPE) is made available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." See section 612 (a)(1)(A).

Section 615(k) of IDEA '97 contains procedures for States and school districts to apply in disciplining disabled students. Specifically, IDEA '97 allows school personnel to move a student with disabilities to an interim alternative educational setting for up to 45 days, if that student has brought a weapon to school or a school function, or knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school or a school function. See section 615(k)(1). If a removal from the student's current educational placement that exceeds ten school days is contemplated, the Individualized Education Program (IEP) Team and other qualified personnel must conduct a review of the relationship of the student's disability to the behavior giving rise to the disciplinary action, also known as a manifestation determination. See section 615(k)(4). If the result of the review, conducted consistent with section 615(k)(4)(C), is a determination that the student's behavior was not a manifestation of his or her disability, IDEA '97 states that " . . . the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(i)." Section 615(k)(5). Section 612(a)(1) requires that FAPE be made available to disabled students expelled from school. This requirement to make FAPE available is applicable to students with disabilities who bring weapons to school.

We hope that you find this explanation helpful. If we can be of further assistance, please let me know.

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