



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

FEB - 5 1999

Honorable Richard J. Durbin  
United States Senate  
Washington, D.C. 20515

Dear Senator Durbin:

This is in response to your letter dated November 30, 1998, written on behalf of your constituent, Mr. Jack Bambrick, Director of Secondary Instruction, Leroy Junior/Senior High School, in Leroy, Illinois. In your constituent's letter to you, he expresses concerns about the implementation of the requirements of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97) as they relate to the disciplining of students with disabilities. In addition, Mr. Bambrick has related an incident involving a particular student who allegedly had a butterfly knife in his locker and also had engaged in other inappropriate behaviors in the classroom. Mr. Bambrick explained that because agreement could not be reached as to whether this student was a danger to himself or others and the parents would not agree to his placement in an alternative facility, the student was placed on home instruction for a 45-day interim alternative educational placement.

Mr. Bambrick also expresses his view that since IDEA '97 limits the circumstances under which students with disabilities may be expelled from school, the law creates a double standard.

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.

Because your letter requests information about what steps could be taken under current law in the situation described by your constituent, I would like to take this opportunity to provide a brief summary of some of the major provisions in IDEA '97 relevant to student discipline. A copy of IDEA '97 is enclosed for your constituent's information.

IDEA '97 permits school authorities to remove a child with a disability from the child's regular 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 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), school officials can move a child with a disability to an appropriate placement. In situations where the child's parents do not agree, as appears to be the situation prompting your constituent's inquiry, 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. §615(k)(1)(A). In addition, if a child with a disability is substantially likely to injure self or others in the child's regular placement, school officials can ask an impartial hearing officer to order that the child be removed to an alternative setting for a period of up to 45 days. §615(k)(2) .

We believe that 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 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 procedures 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 §612(a)(1)(A) of IDEA.'97. 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 cutting off children with disabilities from educational services is not an effective punishment. Instead, providing these students an effective alternative program increases their chances of being productive, law-abiding members of their communities. We believe that continued services are essential to ensure that disabled students who are subjected to disciplinary exclusions 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).

On October 22, 1997, the Department published in the Federal Register, at 62 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement statutory changes to Part B of IDEA (Part B) made by IDEA '97. In response to the NPRM, numerous public comments were received, particularly in the area of student discipline, and many of the comments received were similar to those raised in your constituent's inquiry. Please be assured that we have evaluated the comments received very carefully, and are anticipating that final regulations will be issued very shortly.

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 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."  
§614(d)(3)(B)(i). This provision applies whether or not disciplinary action is contemplated. In addition, §615(k)(1)(B)(i) provides that, "if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention 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 that behavior." Section 615(k)(1)(B)(ii) provides that, if a child is disciplined under the terms of §615(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 §615(k)(1)(A). Section 615(k)(3)(B)(ii) also provides that, if a local educational agency (LEA) places a child in an appropriate interim alternative educational setting for drug or weapon offenses described in §615(k)(1) and (2), the interim alternative educational setting must provide services and modifications designed to address the behavior giving rise to that interim placement so that the behavior does not recur.

I hope that you find the above explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of OSEP at (202) 205-5507 or (202) 205-9053, respectively..

Sincerely,



Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosure

cc: Dr. Gordon M. Riffel  
Illinois State Board of  
Education