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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 3 1997

Mr. Richard Bachman Principal Midwest City High School 213 Elm Drive Midwest City, Oklahoma 73110-4892

Dear Mr. Bachman:

Your letter to President Clinton, dated August 29, 1997, has been referred to the U.S. Department of Education's Office of Special Education Programs (OSEP) for review. The following sets forth your inquiry and our response.

You requested clarification of a provision relating to discipline under the Individuals with Disabilities Education Act Amendments of 1997, Public Law 105-17 (IDEA '97).

Let me start by saying that 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.

It appears from your letter that you understand this Department's position to be that a disabled student can never be suspended for more than 45 days for a violent act of misconduct. This is not the case. As explained below, where a student's misconduct is unrelated to the student's disability, the student may be suspended for more than 45 days if that is the disciplinary action taken for non-disabled students.

First, I would note that section 613(j) of IDEA '97, referenced in your letter, does not address disciplinary options available to school personnel. Rather, that section, a copy of which is enclosed for your information, addresses the transfer of school records of disabled children.

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 also is enclosed for your information. Specifically, § 615(k)(1)(A)(ii) states that if a disabled student brings a weapon to, or knowingly possesses or uses 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 non-disabled 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. IDEA '97, § 615(k)(5)(A). 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 the IDEA '97. If you would like further information, you may wish to contact the persons whose names and telephone numbers appear on OSEP Memorandum 97-7, or Ms. Maral Taylor, your State contact in the Monitoring and State Improvement Planning Division, at (202) 205-9181.

Sincerely,

Thomas Hehir

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Director
Office of Special Education
Programs

Enclosures

cc: Darla Griffin

Oklahoma Department of Education