

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 20, 1998

Dear

Your letter dated , written to the office of the Attorney General, as been referred to the Office of Special Education Programs (OSEP) for response, by the Disability Rights Section of the U.S. Department of Justice's Civil Rights Division. OSEP administers the Individuals with Disabilities Education Act (IDEA). Part B of IDEA (Part B) provides Federal financial assistance to States, and through them to local school districts, to assist in making a free appropriate public education (FAPE) available to all children with specified disabilities residing in the State in mandatory age ranges.

As a result of the recent school experiences of your
who has

you wrote to voice a number of concerns to Federal officials. According to your letter, has been determined to be eligible for services under Part B under the "other health impaired" (OHI) category and has an individualized education program (IEP), which includes a behavioral intervention plan.

You describe recent disciplinary situations involving including a suspension for allegedly kicking a teacher and subsequent assault charges brought against for allegedly scratching a teacher. The following explanation of the requirements of Part may be of some assistance to you in the future.

Student discipline is primarily a matter of State and local jurisdiction. It should be pointed out, however, that if students with disabilities are involved, the requirements of Federal laws governing the education of disabled students are applicable. It has always been the position of this Administration that our schools should be safe, disciplined, and drug-free. IDEA, as amended by the IDEA Amendments of 1997, Pub. L. 105-17 (IDEA '97), expands options available to school districts in disciplining students with disabilities, while

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safeguarding the rights of children with disabilities and their parents. A copy of IDEA '97 is enclosed for your information.

For purposes of your inquiry, it is important to emphasize that IDEA '97 sets out procedures that must be followed in disciplining students with disabilities. As a general matter, students with disabilities may be disciplined in the same manner as nondisabled students, as long as disabled students are not penalized for behavior that is a manifestation of their disability and are provided educational services in an appropriate alternative setting. The review of the relationship of the child's disability to the behavior, known as the "manifestation determination," must be conducted by the IEP Team and other qualified personnel, in accordance with criteria set out in §615(k)(4) of IDEA '97.

IDEA '97 also recognizes the critical importance of addressing signs of misconduct of students with disabilities as soon as they appear, to prevent the need for more drastic measures. To this end, the IEP provisions of IDEA '97 require that, in developing each child's IEP, the IEP Team must "consider the strengths of the child and the concerns of the parents for enhancing the education of their child." §614(d)(3)(A)(I) of IDEA '97. In addition, "in the case of a child whose behavior impedes his or her learning or that of others, [the IEP Team] consider[s], when appropriate, strategies, including behavioral interventions, strategies, and supports to address that behavior. §614(d)(3)(8)(i). Effective use of these strategies could contribute to a safe learning environment for all students and could facilitate the progress of students whose disabilities have behavioral components.

It appears from the information provided in your letter that you have made diligent efforts to work with and to ensure that receives appropriate services. We sincerely regret that despite these efforts, has experienced the difficulties outlined in your letter. Unfortunately, there are no Federal funds available to individuals to fund summer programs such as the one described in your letter. Hopefully, by the time you receive this letter, the difficulties prompting your inquiry will have been resolved. If you believe that the requirements of Part B were violated, you may file a signed, written complaint with the Kentucky Department of Education (KDE) under the State complaint procedures in the Part B regulations at 34 CFR §300.660-300.662 (copy enclosed). Under these procedures, KDE must investigate and resolve any complaint that it receives within 60 calendar days. You also have the right to request mediation or initiate an impartial due process hearing on any matter relating to the identification, evaluation, or educational placement of

or the provision of FAPE to . To file a complaint, or to request •mediation or initiate a due process hearing, you can contact the KDE official named below, at the following address and telephone number:

Mr. Michael Armstrong
Director
Division of Exceptional Children
Capital Plaza Tower
500 Moro Street, Room 805
Frankfort, Kentucky 40601
Telephone: (502) 564-4970

Enclosed is an information packet that you may find helpful, which provides numerous resources to assist parents in working with their . We also thought that you might find it useful to know that the Department of Education funds a number of projects that focus on the use of positive behavioral interventions and supports. In particular, the following resources may be of assistance to you. The Office of Special Education and Rehabilitative Services funds a center for Effective Collaboration (CEC) for children with emotional and behavioral problems, located at the American Institutes for Research (AIR) in Washington, D.C. They provide information exchange on issues and materials related to positive behavioral supports, strategies, and interventions to help students with or at risk of emotional disturbance. Their web site is www.AIR-DC.ORG/CECP/CECP.html, or you may wish to call then directly by telephone. Some individuals you may wish to contact there would be Dr. David Oshar (202-944-5373) or Dr. Mary Quinn (202-944-5386).

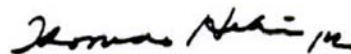
The Beach Center on Families and Disability, a Research and Training Center on Positive Behavioral support, located at the University of Kansas, can be reached at (785)864-7600. Their web site is <http://www.interact.uoregon.edu/ivdb/ivdb.html>.

An additional sources of information is the Institute on Violence and Destructive Behavior at the University of Oregon. Their web site is <http://interact.uoregon.edu/ivdb/ivdb.html>.

We hope that you find this explanation and the enclosed information helpful. If you would like to contact someone from this Office who is familiar with special education services for children with disabilities in Kentucky, please contact Dr. Gerrie

Hawkins, the Kentucky State contact in the Monitoring and State Improvement Planning Division, at (202) 205-5386.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Hehir".

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Mike Armstrong
Kentucky Department
of Education

Joseph F. Talian
Disability Rights
Section
Civil Rights Division
U.S. Department of Justice