



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

DEC - 8 1998

Dear

Your letter to _____ dated _____ regarding the disciplining of students with disabilities was referred to the Office of Special Education and Rehabilitative Services (OSERS) for response. You wrote because you are concerned that the State of _____ is interpreting the requirements of Federal law that govern the disciplining of disabled students more stringently than other States. While you have not explained the State interpretation that prompted your inquiry, I would like to take this opportunity to clarify the requirements of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97) that are pertinent to your inquiry.

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.

Because it appears that you may not be fully aware of all of the options available to school authorities in disciplining students with disabilities, we 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 information.

IDEA '97 permits school authorities to remove a child with a disability from the child's 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, IDEA '97 permits school authorities to remove a child with a disability from the child's placement for up to 45 days at a time if the child brings a weapon to school or to a school function, or possesses or uses illegal drugs or sells or solicits controlled substances while at school or a school function. 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.

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 child's placement prior to the removal, 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.

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 current educational placement if the school district believes that maintaining the student in the current 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 H of IDEA (Part B) made by IDEA '97. In response to the NPRM, numerous public

Page 3

comments were received, particularly in the area of student discipline. Please be assured that we are evaluating the comments received very carefully as we identify areas that warrant clarification or revision in the final regulations.

We hope that you find the above explanation helpful. If you would like further assistance, please contact the contact in the Monitoring and State Improvement Planning division, at .

Sincerely,

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

Thomas Hehir
Director
Office of Special Education
Programs

Enclosure

cc