



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUN 26 1998

Dear :

Your e-mail transmission written to President Clinton, dated March 4, 1998, has been forwarded to the U.S. Department of Education, Office of Special Education Programs (OSEP) for response. In your e-mail, you express your concern regarding the Individuals with Disabilities Education Act (IDEA) and the protections you believe it affords to disabled students in disciplinary situations. It is your impression that a disabled student can only be disciplined for a maximum of ten school days in a given school year, while there is no similar limit for nondisabled students.

As you may know, on June 4, 1997, President Clinton signed into law the Individuals with Disabilities Education Act Amendments of 1997, (IDEA '97). Among the major provisions that are contained in IDEA '97 are new requirements relating to disciplining disabled students. I am enclosing a copy of IDEA '97 for your information. 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. I believe that the provisions of IDEA '97 strike an appropriate balance between the importance of providing a safe and orderly learning environment for all students and safeguarding the rights of disabled students and their parents.

It has always been the Department's position that 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 alternative setting. 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. 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 provides 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).

It, has long been the Department's view that cutting off students with disabilities from educational services is not an effective punishment. Instead, it reduces 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 subject 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.

We hope that you find this explanation helpful, and we appreciate the opportunity to clarify the requirements of IDEA '97 that are relevant to your inquiry. If you would like to contact someone from this office who is familiar with the provision of special education services to children with disabilities in Kentucky, please contact Dr. Gerri Hawkins, the Kentucky State contact in the monitoring and State Improvement Planning Division, at (202) 205-5486.

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

Enclosure

cc: Mr. Michael Armstrong  
Kentucky Division of Exceptional  
Education