



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

DEC 17 1997

Mr. Paul E. Miller  
Principal  
Laquey R-V High School  
P.O. Box 130 Hwy "AA"  
Laquey, Missouri 65534-0130

Dear Mr. Miller:

This is in response to your letter, dated October 27, 1997, written to Secretary of Education Richard W. Riley, regarding disciplining students with disabilities. We very much appreciate your taking the time to write and share your concerns with us on these important issues.

In your letter, you pose questions regarding whether a student with an individualized education program (IEP) can be disciplined; why discipline is different for students who have an IEP when the behavior is not related to the disability; and why, if a student continuously exhibits negative behavior, there is an accumulated total of 10 days suspension, especially if the IEP does not reflect violent behavior.

To respond to your concerns, let me review some of the requirements of Part B of the Individuals with Disabilities Education Act, as amended, that are pertinent to your inquiry..

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. In addition, on October 22, 1997, the Department published, in the Federal Register at 55 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement IDEA '97. A copy of this NPRM is enclosed 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.

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 to change the placement of a disabled student to 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.

However, I must point out 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). It also is the Department's position that, while schools are not required to provide educational services to students with disabilities during suspensions of ten school days or less, FAPE must be provided to students with disabilities who have been removed from their current educational placement for more than ten school days in a given school year. This means that, although students with disabilities may be suspended from school for more than ten school days for misconduct that is not a manifestation of their disability, FAPE must be provided to these students beginning with the eleventh day of removal from the student's current educational placement.

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.

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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 Dr. Helen Eano, your State contact in the Monitoring and State Improvement Planning Division, at (202)205-9583.

Sincerely,

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

Thomas Hohir  
Director  
Office of Special Education  
Programs

Enclosures

cc: Ms. Melodie Friedebach  
Missouri Department of Elementary  
and Secondary Education