UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 30 1998

Honorable Ted Stevens
U.S. Senate
Washington, D.C. 20510-6025

Dear Senator Stevens:

Thank you for your letter dated July 17, 1998 written to Secretary of Education Richard W. Riley, on behalf of a number of your constituents, regular education teachers, who raise concerns about the discipline provisions in the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17,(IDEA '97).

In particular, you request clarification of the Department's position regarding the following issues identified by your constituents: (1) enlarging the scope in which an emergency pullout of a student can occur; (2) removing the existing 45 day timeline during which students with disabilities would be placed in an interim alternative placement; (3) removing the requirement to provide special education services to students while they are suspended or expelled.

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.

While IDEA '97 was never intended to enable students who commit dangerous or violent acts that threaten their own safety or the safety of other students and school staff to remain in their current school placement, it does provide certain procedural protections to ensure that blanket exclusions and expulsions based on a child's disability do not occur.

Regarding the concerns raised by your constituents about enlarging the scope of emergency pullout of students, IDEA '97 permits school authorities to remove a child with a disability from the child's regular school 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.

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. 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 for more than 45 days. 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 regular school 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.

If, by the end of the 45-day period, school officials believe that the child would be dangerous if returned to the regular school, 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. 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).

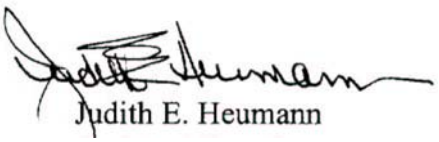
As you are no doubt aware, the precursor to the IDEA had its origin in two seminal federal cases that successfully challenged the blanket expulsion and exclusion of children with disabilities from public schools. Mills v. Bd, of Educ. of D.C. 348 F.Supp. 866 (D.D.C. 1972) and P.A.R.C. v. Pennsylvania, 334 F.Supp. 1257 (E.D. Pa. 1971): 343 F.Supp. 279 (E.D.Pa. 1972). In light of the long history of abuse of discretion that led to the passage of this federal law, we believe that placing into the hands of an impartial hearing officer or judge the decision of whether to allow such exclusions is a good way to balance a disabled child's right to an education and the legitimate concerns for school safety. We believe that IDEA '97 guarantees that children with disabilities will not be denied an education without due process.

As to the last point raised, it has long been the Department's view that cutting off children 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 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.

We hope that you find the above explanation helpful in responding to your constituents' concerns. Thank you for sharing your constituents' concerns with us. We appreciate your continued commitment to the education of our nation's disabled students. If you have further questions, please contact me or have a member of your staff contact Dr. JoLeta Reynolds of the Office of Special Education Programs on (202)205-5507.

Sincerely,



Judith E. Heumann

cc: Ms. Diann Brown
Alaska Department of
Education