



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

Dated November 14, 2007

H. Douglas Cox

Assistant Superintendent
Special Education and Student Services Virginia
Department of Education P.O. Box 2120

Richmond, Virginia 23218-2120

Dear Mr. Cox:

This is in response to your letter of October 12, 2007, in which you raised a concern about the Model Procedural Safeguards Notice (Notice) that the U.S. Department of Education published on its website on August 14, 2006.

Specifically, you indicated that you believed that the first parenthetical in the following paragraph on page 35 of the Notice was not consistent with the requirements of 34 CFR §300.530(b) of the final regulations published on August 14, 2006, pursuant to Part B of the Individuals with Disabilities Education Act:

To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting **(which must be determined by the child's individualized education program (IEP) Team)**, another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see Change of Placement Because of Disciplinary Removals for the definition, below). (Emphasis added.)

In light of the concern raised in your letter, we have reviewed the Notice, and we concur with you that the Part B regulations authorize school personnel to make the determinations permitted under 34 CFR §300.530(h), and do not require that those decisions be made by the IEP team. Accordingly, we will be revising the Model Procedural Safeguards Notice to delete the parenthetical "(which must be determined by the child's individualized education program (IEP) Team)," and disseminating the revised Notice. We will inform you when we have disseminated the revised Notice.

Thank you for bringing this issue to our attention. If you have any questions regarding this letter, please contact Larry Ringer of my staff, at (202) 245-7496.

Sincerely,

/s/

Patricia J. Guard
Acting Director
Office of Special Education Programs