



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

AUG _ 3 2000

Rodney J. Bieker
General Counsel
Kansas State Department of Education
120 S.E. 10th Avenue
Topeka, Kansas 66612-1182

Dear Mr. Bieker:

This is in response to your letter to Dr. JoLeta Reynolds of the Office of Special Education Programs (OSEP) dated February 1, 2000, seeking further clarification as a result of a letter dated December 15, 1999 that OSEP issued in response to an inquiry from Mr. Perry Zirkel.

The issue prompting Mr. Zirkel's inquiry was whether under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97), OSEP's response dated July 21, 1991 to an inquiry from Ms. Jane Rhys of the Kansas Department of Education was valid. Our response to Mr. Zirkel addressed the requirements applicable to a change in placement in the disciplinary context, in accordance with 34 CFR §§300.519-300.529. It also clarified the applicability of the requirements for providing continuing educational services beginning with the eleventh day of a child's removal from school in accordance with the standard set out at 34 CFR §300.121 (d) of the regulations implementing statutory changes made to Part B of IDEA by IDEA '97 published in the Federal Register on March 12, 1999 at 64 Fed. Reg. 12406.

Your specific inquiries are set out below and are followed by OSEP's responses.

1. Are disciplinary removals of up to 10 school days, which occur prior to a change in placement agreed to by a parent and an LEA, to be ignored in determining when services must be provided to students subjected to disciplinary removals? (Do such removals count in determining the eleventh day of removal during a school year?)

Disciplinary removals of up to 10 school days prior to a change in placement agreed to by the parents cannot be ignored in determining when services must be provided to children subject to subsequent disciplinary removals. On the eleventh day of the child's removal in any particular school year, a determination must be made as to the extent that the child would receive continued educational services in accordance with 34 CFR §300.121 (d) of the Part B regulations.

2. Are disciplinary removals of a child with a disability during a school year to be ignored in determining the existence of a pattern of removals, if those removals occur prior to a change in placement agreed to by the parent and LEA?

No. The standard set out in the regulation at §300.121 (d) would apply beginning with the eleventh day of the child's removal from school in a school year. A manifestation determination

would only be required if a determination is made that the series of removals constitutes a "change of placement" in the disciplinary context or a child is removed for more than ten consecutive school days at a time. 34 CFR §300.523. As OSEP explained above, as well as in the response to Mr. Zirkel, the relevant inquiries under IDEA '97 are whether the child has been removed from the current placement for more than 10 school days in a school year, and whether a "change of placement" in the disciplinary context has occurred. While the letter to Ms. Jane Rhys represented a proper interpretation of prior law at the time, it is OSEP's view that the Rhys letter no longer should be applied in determining public agencies' obligations to students with disabilities in disciplinary matters.

We hope that you find this explanation helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds at (202) 205-5507.

Sincerely,

Kenneth R. Warlick
Director
Office of Special Education Programs

Cc: Dr. Alexa Pochowski
State Director of Special Education
Kansas State Department of Education