



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

JUL 27 1999

Honorable Rush Holt
House of Representatives
Washington, DC 20515

Dear Mr. Holt:

This is in response r-o your inquiry to the Department's Cffice of
Legislation and Congressional Affairs made on behalf of ,your
constituent, [REDACTED]

Your constituent provided a written statement to the New Jersey Joint
Committee on the Public Schools regarding the school's recent response
to an incident which took place on During that incident, your
constituent has indicated that and another student, in the presence of
other students, were seriously threatened "with severe injury and
death" by a student with a disability who has an individualized
education program (IEP). Although your constituent explains that the
student was sent home for the remainder of the school day, was
permitted to return to school the next day on in-school suspension.
Your constituent believes that the steps taken by school authorities
were not adequate under these circumstances.

The Department takes very seriously the concerns that you raise,
and sincerely hopes that your constituent and the
other students involved have been receiving the help they need to
overcome the effects of the incident. In addition, any time that
a student threatens the safety of others, regardless of whether
the student has a disability, school officials must take prompt
and appropriate steps to address the behavior, and we believe
that, based on the information you have provided, many
appropriate steps were taken. However, in your constituent's
statement, concern is expressed that the incident was not
reported by school authorities to the police, no out-of-school
suspension of the student occurred as a result of the incident
until the Assistant Superintendent subsequently imposed an out
of-school suspension, and the student was returned to school
premises the very next day, "supposedly without student contact."
Below is an explanation of the requirements of the IDEA that
could be relevant to this situation.

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

In cases involving threats of bodily injury by students, IDEA provides school officials with a number of options for addressing misbehavior that ensure a safe learning environment for all students.

With regard to the child's status following the incident, it may have been important for the child's parents and school officials to attempt to reach an agreement on a change of placement for the student. Frequently, parents and school officials working together can use IDEA's IEP and placement procedures and can reach agreements of this nature, which could be beneficial for all involved. However, if agreement cannot be reached, there is nothing in IDEA that would have prevented school officials from removing the child from school for up to ten school days, even over the parent's objections, if the removal would not constitute a change of placement and such an alternative would be used for students without disabilities. 34 CFR §300.520(a).

If a school district believes that there is a substantial likelihood of injury to the child or to others if the child is allowed to remain in the regular school placement, the school district can ask a hearing officer, in an expedited due process hearing, to place the student in an appropriate interim educational setting for up to 45 days. 34 CFR §300.521. If, at the end of the 45 day period, school officials still believe that there is a substantial likelihood of injury to the child or to others if the child is allowed to return to the regular placement, they can ask an impartial hearing officer to order that the child remain in the interim alternative educational setting for an additional 45 days. 34.CFR §300.526(c). If necessary, school officials also can request subsequent extensions of the interim placement for up to 45 days at a time. 34 CFR §300.526 (c) (4) .

In addition, at any time, school officials may seek to obtain a court order to remove a child with a disability from school or to change his or her current educational placement if they believe that maintaining the child in the current educational placement is substantially likely to result in injury to the child or to others. *Honig v. Doe*, 108 S.Ct. 592, 606 (1988).

In addition, there is nothing in IDEA that prohibits school officials from reporting a crime committed by a child with a disability to appropriate State law enforcement or judicial authorities, to the same extent that crimes committed by children without disabilities would be reported. 34 CFR §300.529.

Under IDEA's IEP provisions, if a child has behavior problems that i-terfere with his or her learning or that of others, the

IEP team must consider whether strategies (including positive behavioral interventions, strategies, and supports) are needed to address the behavior. 34 CFR §300.346(a)(2)(i). If the IEP team determines that such services are needed, the services must be added to the IEP and must be provided. Research has shown that, if teachers and other school personnel have the knowledge and expertise to provide appropriate behavioral interventions, future behavior problems can be greatly diminished, if not totally avoided.

We sincerely hope that by the time this letter reaches your constituent, and the other students involved are recovering from the threats you describe. We hope that school officials find this explanation of applicable IDEA discipline provisions helpful. If we can be of further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of my staff at (202) 205-5507, or (202) 205-9053, respectively.

Sincerely,



**Thomas Hehir
Director
Office of Special Education
Programs**

cc: Barbara Gantwerk
New Jersey State Department
of Education