



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

DEC 8 1997

Dr. James V. Parker, Jr.
Superintendent
Wilkes County Board of Education
313-A North Alexander Avenue
P.O. Box 279
Washington, Georgia 30673

Dear Superintendent Parker:

Thank you for your letter to Secretary of Education Richard W. Riley, dated September 24, 1997, regarding certain requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). You wrote because you have serious concerns about how rural school districts can meet the costs of providing alternative programming to disabled students who commit felonies or other violent offenses. Your letter has been referred to the Office of Special Education Programs (OSEP) for review, and I am pleased to respond.

IDEA '97 was the result of bipartisan efforts headed by Senate Majority Leader Trent Lott's Chief of Staff, David Hoppe. These efforts were an exhaustive process that covered countless issues and lasted several months. The final proposal received overwhelming support in both Houses of Congress.

IDEA '97 now makes explicit in section 612(a)(1)(A) that States and school districts must make a free appropriate public education (FAPE) available to all eligible disabled students, including those disabled students suspended or expelled from school. This statutory amendment is consistent with the Department's interpretation of the FAPE requirements contained in prior law. The specific provisions applicable to disciplining disabled students are set out at section 615(k) (Placement in Alternative Educational Setting), and I have enclosed a copy of these statutory provisions for your information. I am also enclosing an OSEP Memorandum that provides initial guidance on the requirements of IDEA '97 as they relate to the discipline of children with disabilities and the Department's notice of proposed rulemaking published by the Department on October 22, 1997.

The rights and protections set out in IDEA '97 are fundamental civil rights that guarantee children with disabilities equal educational opportunity. Under IDEA '97, the Federal Government provides funds to assist States in carrying out their responsibilities to educate children with disabilities. However,

the primary responsibility for providing and paying for these services lies with the States. As demonstrated by the fiscal year 1997 appropriation of \$525 per child, which represents a significant increase from the prior year per child amount of \$413, it is evident that the federal government is committed to maintaining the Federal contribution to special education as costs increase and the population grows, and to assisting States with improving the quality of services.

Your letter suggests that, as a result of the requirement that FAPE be provided to disabled students who are suspended or expelled from school, disabled students simply cannot be expelled. This is incorrect. As was the case under prior law, IDEA '97 continues to permit school districts to suspend or expel disabled students from school for misconduct that is not a manifestation of their disability; however, IDEA '97 also makes explicit that these students must have a free appropriate public education available to them during these periods of disciplinary removal from school. 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 chance of being productive, law-abiding members of their communities.

Again, thank you for sharing your concerns with us. I wish you a successful school year.

Sincerely,

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

Thomas Hehir
Director
Office of Special Education
Programs

Enclosures