



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

JUL 10 1998

Arkansas

Dear Mr. Hillian:

This is in response to your letter written to President Clinton, dated May 11, 1998. A copy of your letter has been forwarded to the U.S. Department of Education, Office of Special Education Programs (OSEP), for response. Accompanying your letter was the September 19, 1997 OSEP Memorandum entitled "Initial Disciplinary Guidance Related to Removal of Children with Disabilities from their Current Educational Placement for Ten School Days or Less." In your letter, you express your concerns regarding the requirement to provide special education services to a disabled student who has been expelled for bringing a firearm to school.

Under Part B of the Individuals with Disabilities Education Act (Part B of IDEA), as amended by the IDEA Amendments of 1997 (IDEA '97), States must ensure that a free appropriate public education (FAPE) is made available to all children with disabilities in mandatory age ranges. This includes disabled children who have been suspended or expelled from school. §612(a)(1)(A) of IDEA '97. Among the major provisions that are contained in IDEA '97 are new requirements relating to disciplining disabled students. 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. Section 615(k) of IDEA '97 addresses the options available to school authorities in disciplining disabled students and sets forth procedures that must be followed in taking disciplinary actions. IDEA '97 requires the provision of FAPE to suspended or expelled students in an alternative setting, but does not specify the alternative setting in which educational services must be provided. IDEA '97, §615(k)(5)(A) and §612(a)(1)(A). What constitutes an appropriate interim alternative educational setting will depend on the circumstances of each individual case.

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 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. At the same time, however, it is essential that schools remain safe and orderly places conducive to learning for all students.

As you may know, on October 22, 1997, the Department published in the Federal Register, at 62 Fed. Reg. 55026, a Notice of Proposed Rulemaking (NPRM) to implement statutory changes to Part B of IDEA (Part B) made by IDEA '97. At present, the Department is in the process of finalizing these regulations. In response to the NPRM, numerous public comments were received, including comments similar to those set forth in your letter. Please be assured that the Department is considering the views expressed in these public comments very carefully as the Part B regulations are finalized.

We hope that this information has been helpful to you.

Sincerely,



Thomas Hehir  
Director  
Office of Special Education  
Programs

cc: Dr. Diane Sydoriak  
Arkansas Department of  
Education