



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 29, 1998

Linda B. Eldridge, Ph.D.
Superintendent
Peggy Trivelas
Director, Special Education
Aiken County Public Schools
1000 Brookhaven Drive
Aiken, South Carolina 29803

Dear Dr. Eldridge and Ms. Trivelas:

This is in response to your letter dated June 15, 1998, written to Assistant Secretary Judith Heumann of the Office of Special Education and Rehabilitative Services, in which you express concerns about disciplining disabled students. Specifically, you report that you have been advised by unidentified persons to interpret Section 615(k)(1)(A)(1) of the Individuals with Disabilities Education Act Amendments of 1997, Pub. L. 105-17 (IDEA '97) as prohibiting school officials from removing a child with a disability from school for not more than ten school days in a given school year, regardless of the severity of the offense.

It has always been the position of this Administration that our schools must be safe, disciplined, and drug-free. 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. I believe that the provisions of IDEA '97 strike an appropriate balance between the importance of providing a safe and orderly learning environment for all students and safeguarding the rights of disabled students and their parents.


While we recognize that there have been competing interpretations of the statute, the Department does not believe that §615(k)(1)(A)(i), of IDEA '97 imposes a limitation on the number of suspensions of not more than ten school days that can be imposed on a student in the same school year for separate incidents of misconduct, if: there is not a series of removals that constitutes a change of placement for that child; suspension is one of the disciplinary options used for disciplining nondisabled students who engage in similar misbehavior; and educational services are not ceased during the child's subsequent removal from school.

IDEA '97 was never intended to enable students who commit dangerous or violent acts that threaten their own safety or the safety of other students and school staff to remain in their current placement. For example, the law specifically permits school authorities to remove a child with a disability to an alternative educational placement for up to 45 days at a time if the child brings a weapon to school or to a school function, or possesses or uses illegal drugs or sells or solicits controlled substances while at school or a school function.

In addition, §615(k)(2) of IDEA '97 provides that a hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing, determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. Finally, at any time, school authorities may seek to obtain a court order to remove any student with a disability from school or to change the student's current educational placement if the school district believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or to others. Honig v. Doe, 108 S.Ct. 592, 606 (1988). In the instances described in your letter either of these alternatives could have been used to ensure that your schools remain safe for all children and staff.

We hope that you find this explanation helpful. If you would like further assistance, please contact Dr. JoLeta Reynolds or Ms. Rhonda Weiss of the Office of Special Education Programs at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

cc: Dr. Ora Spann
South Carolina Department of Education