



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

DEC 20 2000

Honorable Bob Graham
United States Senator
ATTN: Angela Leaphart
2252 Killearn Center Boulevard
Third Floor
Tallahassee, Florida 32308

Dear Senator Graham:

Thank for your inquiry made on behalf of Phoebe Raulerson, Superintendent of Schools for the Okeechobee County School Board, dated May 23, 2000, about the issue of discipline as it relates to children with disabilities covered under the Individuals with Disabilities Education Act of 1997 (IDEA '97), Public Law 105-17. Specifically, Superintendent Raulerson states that she believes the IDEA unfairly treats discipline of nondisabled students as compared to students with disabilities for the same infraction, especially in matters of suspension. She describes a situation in which two students, one disabled, and the other not, are found in possession of what they purport to be marijuana. The nondisabled student is expelled, but allowed to enroll in an alternative educational program. The disabled student is suspended for three days and transferred to an off-campus special education program. A couple of weeks later, these students fight while on a school bus. The nondisabled student is dismissed from the alternative educational program, that is, all educational services are ceased, but the student is permitted to reenroll in the alternative program at the beginning of the next semester. The disabled student is suspended for another three-day period and returned to the off-campus special education program.

The Office of Special Education Programs (OSEP) strongly believes that our schools must be safe, disciplined, and drug-free. IDEA '97 and its 1999 implementing regulations expand the prior authority of school administrators to protect the safety of all children, while ensuring that the rights and protections established for students with disabilities are maintained.

With regard to the types of disciplinary removals that are available under the IDEA '97, the statute and regulations specifically permit 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 knowingly possesses or uses illegal drugs or sells or solicits controlled substances while at school or a school function. See 20 USC 1415(k)(1)(a)(II) and 34 C.F.R. § 300.520(2)(ii). Therefore, the IDEA was never intended to enable a student who knowingly possesses or uses illegal drugs while at school to remain in that placement.

The IDEA also 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. These 45-day alternative educational placements may be extended by a hearing officer, as often as necessary, to ensure the appropriate safety of the child and others. 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.

The Department also does not interpret the IDEA to impose a limitation on the number of times that a student with disabilities can be suspended for not more than ten consecutive school days at a time in the same school year for separate incidents of misconduct; where there is not a series of removals that constitutes a change of placement for that child; and where suspension is one of the disciplinary options used for disciplining nondisabled students who engage in similar misbehavior. Removals that constitute a change in placement are subject to a review to assess the relationship between the child's behavior and his or her disability. For a child who has been removed from his or her placement for more than ten school days in that school year, including students who are suspended or expelled, the district must provide educational services that allow the child to progress in the general curriculum and to appropriately advance toward achieving the goals in the child's individualized educational program (IEP). The IDEA does not prescribe the specific setting for these services, however, where the removal constitutes a change in placement, the child's IEP team must determine the necessary services.

As you are no doubt aware, the precursor to the IDEA '97 had its origin in two seminal federal cases that successfully challenged the blanket expulsions and long-term exclusions of children with disabilities from all public school services. Mills v. Bd. of Educ. of D.C. 348 F.Supp. 866 (D.D.C. 1972) and P.A.R.C. v. Pennsylvania, 334 F.Supp. 1257 (E.D. Pa. 1971); 343 F.Supp. 279 (E.D. Pa. 1972). In light of the long history of abuse of discretion that led to the passage of this federal law, IDEA '97 struck a balance between the need for safe, disciplined, and drug-free schools and the belief that misbehavior of students with disabilities is best addressed through appropriate services and behavior plans rather than through blanket exclusions from all educational services. The prohibition against complete cessation of educational services is critically important to achieving our educational (and post-school) goals for students with disabilities. Children with disabilities are more likely to fail in their coursework and drop out than are children without disabilities. Suspending students with disabilities without providing any needed services increases the likelihood they will ultimately fail and increases the probability they will be a burden to the community. Continued provision of educational services, including behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuation of all educational services results in increased costs to society through increased crime, dependency on public assistance, unemployment, and alienation from society.

We hope that you find this explanation helpful for Superintendent Raulerson. Enclosed is a copy of the IDEA implementing regulations, and a copy of the OSEP guide about disciplinary actions and students with disabilities. If you or the Superintendent would like further assistance

on this matter, please contact Dr. JoLeta Reynolds or Mr. Troy Justesen of the Office of Special Education Programs at (202) 205-5507 or (202) 205-9053, respectively.

Sincerely,

A handwritten signature in black ink that reads "Kenneth R. Warlick" followed by a stylized flourish.

Dr. Kenneth R. Warlick
Director
Office of Special Education Programs

Enclosures: IDEA regulations
Disciplinary guide