



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

JUL 28 2005

Commissioner Bill James
Charlotte-Mecklenburg Government Building
600 East Forth Street
Charlotte, North Carolina 28202

Dear Commissioner James:

This letter is in response to an inquiry dated March 23, 2005, from Congresswoman Sue Myrick, written on your behalf, to Secretary Margaret Spellings, U. S. Department of Education, regarding the discipline of students with disabilities. Congresswoman Myrick's inquiry was forwarded to the Office of Special Education Programs (OSEP) for reply. I am pleased to have the opportunity to clarify the requirements of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act Amendments of 2004 (IDEA 2004), which became effective on July 1, 2005, that are applicable to the discipline of students with disabilities.

It appears that your primary concern is that the Charlotte-Mecklenburg Schools (CMS) Board of Education may be misapplying IDEA to permit students who have committed serious disciplinary infractions to remain in their classes. Although we are not in a position to comment on the specific factual situations giving rise to your inquiry, we can provide you a summary of some of the options that IDEA 2004 makes available to school authorities in disciplinary situations. While IDEA 2004 provides school personnel additional flexibility in disciplinary situations, many of the options described below also were available to school personnel under the predecessor statute, the Individuals with Disabilities Education Act of 1997, which was in effect at the time of your inquiry.

It has always been the position of the Department that our schools must be safe, disciplined, and drug free. IDEA 2004 expands the authority of school officials to protect the safety of all children when disciplinary violations occur, while ensuring that required protections are available to students with disabilities. IDEA 2004 continues to permit school authorities to remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days at a time to the extent that such disciplinary action is applied to children without disabilities.

In situations where there is a serious infraction of school rules, school personnel may remove a child with a disability to an appropriate interim alternative educational placement for not more than 45 school days without regard to whether the misconduct was determined to be a manifestation of the child's disability. This type of removal can

occur if the child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the State or local educational agency (SEA or LEA); knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the SEA or LEA. School personnel may remove students to an interim alternative educational setting under the circumstances mentioned above without initiating a due process hearing. In addition, an LEA that believes that maintaining the child in the current placement would result in injury to the child or to others may request an expedited due process hearing to have the child removed to an appropriate interim alternative educational placement for up to 45 school days.

Following the expiration of the 45-school-day placement under the circumstances described above, the LEA may request an expedited due process hearing to seek to maintain the student in the interim alternative educational setting for an additional 45 school days if the LEA believes that the child would be dangerous if returned to the original placement. The child must remain in the interim alternative educational setting either until the expiration of the 45-school-day placement or pending the decision of the hearing officer, whichever is greater. LEAs may make repeated requests for a hearing officer to maintain a child in an interim alternative educational setting for additional 45 school day periods during a school year if they believe that it would be dangerous to return the child to the original placement. At any time, school authorities also may seek to obtain a court order to remove any student with a disability from school or to change the student's educational placement if the school district believes that maintaining the student in the educational placement is substantially likely to result in injury to the student or to others.

Students with disabilities whose misconduct is determined not to be a manifestation of their disability may be disciplined in the same manner and for the same duration as nondisabled students, subject to the continuation of educational services. However, during long-term disciplinary removals, appropriate educational services may be provided to students with disabilities in some setting other than the student's prior school assignment. The individualized education program team of the student subject to long-term disciplinary removal determines appropriate services and the location in which services will be provided.

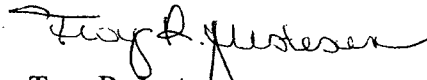
I have enclosed for your information (1) Amendments to the Individuals with Disabilities Education Act (See §615 k); and (2) Notice of Proposed Rulemaking (NPRM), Federal Register, 34 CFR Parts 300, 301 and 304: Assistance to States for the Education of Children with Disabilities, Preschool Grants for Children with Disabilities, and Service Under Special Education – Personnel Development to Improve Services and Results for Children with Disabilities. (See Discipline Procedures beginning on page 35874, at §§300.530-300.536.)

If you have specific questions about the implementation of IDEA 2004 in North Carolina, you may wish to contact the named official of the North Carolina Department of Public Instruction at the following address and telephone number:

Mary N. Watson, Director
Exceptional Children Division
North Carolina Department of Public Instruction
Education Building
301 North Wilmington Street
Raleigh, North Carolina 27601-2825
Telephone Number: (919) 807-3970

I hope that you find this explanation and the enclosed information helpful. If this Office can be of any further assistance regarding this matter, please feel free to contact me or Mr. Larry Ringer, Assistant Division Director, OSEP, at (202) 245-7496.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education
Programs

cc: Mary N. Watson

Enclosures