

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

Tomas Ramirez III Ramirez Professional Building 217 West Hondo Avenue, Suite 200 Devine, Texas 78016 DEC - 5 2012

Dear Mr. Ramirez:

This letter is in response to your June 13, 2012 correspondence to the Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS), U.S. Department of Education (Department). In your letter, you request that OSEP provide guidance regarding whether a hearing officer has jurisdiction to determine whether a certain action by a student with a disability amounts to a violation of the school district's Student Code of Conduct. In your letter, you refer to a specific situation in which the hearing officer declined to determine whether specific conduct was, or was not, a violation of the Student Code of Conduct. While it is not generally OSEP's practice to comment on matters that are the subject of a due process hearing, we are pleased to address the underlying regulatory requirements.

The Individuals with Disabilities Education Act (IDEA) authorizes a hearing officer to decide a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child. See 34 CFR §300.507 and §§300.511 through 300.515. In addition, under 34 CFR §300.532, a hearing officer in an expedited hearing regarding discipline, decides whether to return the child with a disability to the placement from which the child was removed if the removal was a violation of 34 CFR §300.530 or the child's behavior was a manifestation of the child's disability; and decides whether to order a change of placement to an appropriate interim alternative educational setting for not more than 45 school days if maintaining the current placement is substantially likely to result in injury to the child or to others.

In the context of disciplinary hearings, OSEP has previously stated that "a hearing officer must have the ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice and exercise his or her judgment in the context of all the factors involved in an individual case." 71 FR 46540, 46724 (August 14, 2006). Because the hearing officer's authority includes a determination regarding 34 CFR §300.530 and that provision includes references to removal from the current placement of a child with a disability who violates a code of student conduct, there may be instances where a hearing officer, in his discretion, would address whether such a violation has occurred. The IDEA and its implementing regulations neither preclude nor require that a hearing officer determine whether a certain action by a student with a disability amounts to a violation of the school district's Student Code of Conduct.

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Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have any further questions, please do not hesitate to contact Melissa Turner, of my staff, at 202-245-6415 or by email at Melissa.Turner@ed.gov.

Sincerely,

Melody Musgrove, Ed.D.

Director

Office of Special Education Programs