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Declaratory Ruling #21
(Cite as 1 D.P.I. Dec. Rul. 36)

May 4, 1978

Board of Directors
Southeast Warren Community
School District
% Mr. John R. Phillips, and
Ms. Kathleen A. Reimer
ROGERS, PHILLIPS & SWANGER
510 Hubbell Building
Des Moines, Iowa 50309

Dear Mr. Phillips and Ms. Reimer:

Your "Petition for Declaratory Ruling" on behalf of the Southeast Warren Community School District was filed in my office on April 19, 1978. In it, you outline a factual situation which involves a high school student with a learning disability who attends several hours of special education classes per day with the balance of the school day spent in regular classroom instruction. The student has been previously suspended from school on several occasions due to repeated violations of written School District rules which apply to all School District students. The student and his parents were notified following the last violation that further violation of the District's rules could result in a recommendation to the Board of Directors for the student's expulsion from school. The student did subsequently violate the District's rules and was recommended for expulsion by both the High School Principal and the Superintendent. You raise several questions in regard to these factual circumstances.

I.

1. Whether school district rules and regulations for student conduct established by the Board of Directors apply equally to special education students such as the student described above.

Generally speaking, special education pupils should be expected to follow the same rules and regulations for student conduct as any other student enrolled in the District. Sometimes, however, the nature of the specific handicap would require alteration in rules to accommodate the handicapped child. An example of this might be an extension of the time necessary to pass between classes. If a child is

capable, as most are, in understanding and observing the rules, the handicapped child should be expected to be in conformance with valid school rules and regulations of conduct.

II.

2. Whether repeated violation of district rules and regulations for student conduct by a special education student may constitute a circumstance where the student "cannot sufficiently profit from the work of the regular classroom."
3. Whether repeated violations of district rules and regulations for student conduct by a special education student may constitute a circumstance where the student "can no longer benefit from instruction."

The statutory phrases you quote are from Section 281.8, the Code 1977. Reading that Section as a whole, I do not conclude that the language you have quoted has any relationship whatsoever to student discipline. The legislative intent appears to be a clarification of a school district's responsibility in attempting to educate a child in a least restrictive environment whose handicaps are so severe that any efforts on the part of the school to educate the child in that environment would be inappropriate. The issue spoken to in that Section deals with the student's ability to benefit from instruction, not the effect of the student's conduct upon the instruction of other students. There are many students whose conduct leaves much to be desired, but nevertheless profit from instruction. My answer to both is in the negative.

III.

4. Whether a school district can expel a special education student.

Assuming the term "expulsion" to mean a complete and total nonvoluntary removal of a student from education programs, I must again respond in the negative. The Iowa legislature has made it abundantly clear that children in need of special education shall be granted the opportunity to receive it. See Sections 257.25, subsection 5, 273.5 and 281.2. See also, Departmental Rules 670--12.2(1) and 12.11(1). It is also clear to me that the legislature does not feel that students identified as being in need of special education should be totally excluded from an education. The legislature, in 1975, amended Section 282.3, subsection 1, to preclude such total removal of special education students from educational programs. That subsection now reads as follows:

282.3(1) The board may exclude from school children under the age of six years when in its judgment such children are not sufficiently mature to be benefited by regular instruction, or any incorrigible child or any child who in its judgment is so abnormal that regular instruction would be of no substantial benefit to him, or any child whose presence in school may be injurious to the health or morals of other pupils or to the welfare of such school. However, the board shall provide special education programs and services under the provisions of chapters 273, 281, and 442 for all children requiring special education. [emphasis mine]

I read that section to allow students whose conduct is sufficiently injurious to the welfare of the school to be removed from the regular instructional program. But a school district so removing a student remains duty bound to provide an appropriate alternative special education program.

The difficulty of the issue you raise here is that my response to this question appears to be in conflict with the authority of a school board to expel students. I feel that to the extent the authority contained in Section 282.4 conflicts with the language of Section 282.3, subsection 1, the former must yield. Section 4.7 in the Code chapter dealing with construction of statutes reads as follows:

4.7 Conflicts between general and special statutes. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision.

I feel that Section 282.4 is a general provision of the Code dealing with violations of school rules and Section 282.3, subsection 1, is a more specific Section dealing with a school district's responsibility toward special education students. I also note that Section 282.4 has remained unchanged in the Iowa Code for over 100 years, where Section 282.3, subsection 1, was amended as recently as 1975. Thus, I must conclude that the use of expulsion proceedings as means of changing the placement of a disruptive special education student is precluded under current Iowa law.

IV.

5. What procedures are necessary for expulsion of a special education student.
6. If a hearing is necessary for expulsion of a special education student, who should serve as the hearing body or officer in that hearing?
7. Whether expulsion procedures are necessary to remove a special education student from regular classroom study and to place that student totally within a special education program of study such as a self-contained special class or home study.

As stated above, I do not feel that expulsion proceedings are appropriate for students involved in special education programs. The more appropriate procedure for handling special education students involved in violations of school conduct rules to the extent that their actions are significantly injurious to the welfare of the school is to request a re-evaluation of the student's placement. See 670--12.19(4), Iowa Administrative Code. The diagnostic-educational team re-evaluating the educational program for the student may take serious or repeated violations of school district rules into account when determining the appropriate placement for the student.

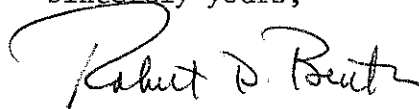
V.

8. Whether approval of the area education agency, contracting with the district, is necessary prior to expulsion of a special education student, and if so, in what form and by whom must that approval be given.

Keeping in mind the inappropriateness of expulsion of special education students, approval for a change in placement of students involved in special education programs following an appropriate diagnostic-educational team re-evaluation must be granted by the area education agency director of special education. See Section 273.5.

While the foregoing responses represent my reading of current Iowa law on the questions you raised, I find it interesting to note that the only federal court interpretation of federal law of which I am aware, on the same issues, arrives at nearly identical conclusions to mine under Iowa law. That decision is Stuart v. Napp, 443 F.Supp. 1235 (Con. 1978).

Sincerely yours,



Robert D. Benton, Ed.D.
State Superintendent of Public Instruction

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