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OA/ID Number: 12025

FolderID:

Folder Title:

Discipline - IDEA [Individuals with Disabilities Education Act]

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Withdrawal/Redaction Sheet

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
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OA/Box Number: 12025

FOLDER TITLE:

Discipline - IDEA [Individuals with Disabilities Education Act]

2007-0143-F
db4498

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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President's
Prevention
C

EXECUTIVE OFFICE OF THE PRESIDENT
Office of Management and Budget
Legislative Reference Division
Labor, Welfare and Personnel Branch
Washington, DC 20503

cc Jeremy

FYI

Diana

Facsimile Transmission

Sender's FAX Number (202) 395-6148
Sender's Phone Number (202) 395-3803

TO:	AGENCY:	FAX Phone	Recipient's Phone
DIANA FORTUNA			

FROM: *Connie J. Bowers*

DATE: Thu May 23, 1996 8:26am

No. of Pages (including transmittal sheet):

COMMENTS:

FINAL ED BILL REPORT ON HR 3268 == IDEA

Attached is the final bill report as transmitted to the Committee. I understand from Jeremy Ben-Ami that in addition to the DPC, the following agreed to the revised language: L. Panetta, R. Emanuel, G. Stephanopoulos, and K. Apfel.

cc: L. Fairhall
N. Tinklepaugh
J. Forsgren



UNITED STATES DEPARTMENT OF EDUCATION

THE SECRETARY

MAY 22 1996

Honorable William F. Goodling
Chairman
Committee on Economic and Educational Opportunities
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express the views of the Department of Education on H.R. 3268, the IDEA Improvement Act of 1996. This legislation would reauthorize the Individuals with Disabilities Education Act (IDEA), which plays a vital role in helping to ensure that millions of children with disabilities receive an equal educational opportunity.

I am pleased that, in many respects, this bill incorporates the major themes advanced by the Administration in its reauthorization proposal, introduced last year as H.R. 1986: improving educational results for children with disabilities by promoting their greater inclusion in the general curriculum, in general assessments, and in State and local reform efforts; focusing even more on teaching and learning by reducing paperwork and increasing administrative flexibility; and providing families and teachers with the knowledge and training they need to effectively support students' learning. I urge your Committee and the entire House to speedily pass legislation that reflects these approaches so that children with disabilities can benefit from them, and so that States, local school districts, parents, and others can promptly implement them.

While it is gratifying that H.R. 3268 embodies a substantial amount of what we have proposed, there are several significant provisions of the bill that are objectionable or that need improvement.

Discipline

Our nation's schools must be safe, disciplined, and drug-free. This Administration has made tremendous strides toward this goal through a variety of measures, including issuing a Presidential Directive to enforce the "zero tolerance" measures outlined in the Gun-Free Schools Act, supporting student athlete drug testing before the Supreme Court, developing a manual for schools to assist them in establishing school uniform policies, which promote discipline and respect, strengthening and expanding the Safe and Drug-Free Schools and Communities Act, and proposing important initiatives to make the juvenile justice system tougher

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and smarter and to make children free of drugs and guns. Clearly, in order to maintain safe, orderly, and drug-free classrooms, schools must be able to discipline all children, including children with disabilities, and teach all children to live by rules.

That is why I support the expansion of schools' authority to discipline students with disabilities and to make it clear that schools can suspend or expel students with disabilities who bring weapons and illegal drugs to school. As you know, the Administration proposed to expand current law, which allows school officials to unilaterally transfer a child with a disability who brings a gun to school to an interim educational placement for up to 45 days, to apply to other types of weapons. I am pleased that H.R. 3268 includes this proposal, and I support the bill's further expansion of this authority to cover children who bring illegal drugs to school. The use of illegal drugs is a grave threat to our children's physical and mental health, and illegal drugs have no place in our schools. The Administration's bill also proposed to allow hearing officers, rather than school personnel, to change the placement of a child who is substantially likely to cause injury, and I am pleased that H.R. 3268 includes this proposal as well. I would also support an amendment, which I understand may be offered, that would specifically allow a disruptive child's teacher to convene an IEP meeting to address the child's behavior.

Despite my support for these provisions, I have some significant concerns, described below, that proposed section 615(k) goes too far and could, therefore, greatly harm children with disabilities.

1. Alternative educational placements. I agree that school officials should be able to unilaterally transfer a child with a disability who brings a weapon or illegal drugs to school to an interim educational placement for up to 45 days. At the same time, I believe that the bill should include a clear and objective definition of the terms "weapon" and "illegal drugs", so that children with disabilities are not subject to arbitrary and unequal application of vague or subjective definitions.

My concerns about the potential for misuse of disciplinary provisions against children with disabilities lead me to object to language in the bill that would weaken the "stay put" provisions of the Act by allowing school personnel to unilaterally change the placement of children with disabilities who commit assault and battery at school. Such a change of placement could last for up to 55 school (not calendar) days (and, if the parents contest that change, until that dispute is resolved) even if the child's behavior was relatively minor, caused no injury or damage, and was clearly a manifestation of the child's disability.

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I also urge the Committee to reject an amendment, which I understand may be offered, that would allow school personnel to unilaterally change the placement of a child with a disability who has endangered someone's emotional health through a purely verbal assault, even if the child's outburst was a manifestation of his or her disability. While I recognize that words can sometimes hurt, this authority tips the balance far too much against children with disabilities by allowing school personnel to change their placement on the basis of highly subjective determinations about the effect of mere speech on someone's mental health.

Moreover, as I mentioned above, the bill addresses assault and battery and serious injury by including our proposal to allow hearing officers (but not school personnel) to change the placement of a child who is substantially likely to cause injury. Because this new authority is sufficient to deal with cases of assault and battery and serious injury, the bill should omit an unnecessary any separate treatment of that misconduct.

Finally, we need to remember that the sad history before the "stay put" protection was added to Federal law was that school officials routinely used disciplinary measures to remove children with disabilities simply because they were difficult to educate. We must guard against weakening the "stay-put" protection in ways that could result in the exclusion of children with disabilities from educational opportunities.

2. Termination of all educational services. I think we all agree that children must understand the importance of following school rules and the consequences, to themselves and others, of their misconduct and that removal of children from the classroom may be necessary to ensure safety and discipline. That is why I believe that schools should be able to unilaterally remove from school students who bring weapons or drugs to school and that hearing officers should be able to order speedy removal of students who are substantially likely to cause injury. I also support the use of suspension and expulsion as disciplinary measures in appropriate circumstances. At the same time, I firmly believe that children with disabilities who have been expelled or suspended from school will do better in the long run if they continue to receive educational services in some other setting than if they are completely cut off from those services. That is why our bill did not provide for the cessation of services for children with disabilities. I continue to stand by that position.

Children with disabilities whose behavior is not a manifestation of their disabilities ought, with appropriate safeguards, to be subject to the same rules and disciplinary measures as non-disabled children. However, cutting these children off completely from educational services is not an effective form of

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punishment. Instead, it reduces the odds that these children will be productive, law-abiding members of their communities.

I am particularly opposed to the termination of services for children with disabilities who commit an "assault and battery", as the bill would permit. Determining whether a particular action, such as throwing an eraser or pushing another child on the playground, constitutes assault and battery in the school setting is a highly subjective undertaking -- especially outside the safeguards and standards of the criminal law from which the concept of assault and battery is taken -- and one that could easily be misused against children with disabilities. Moreover, certain disabilities, such as autism, cause children to engage in behavior, more frequently than other children, that could fit within a State's definition of assault and battery or that school officials may be tempted to characterize as assault and battery. Because the determination of whether a particular act was, or was not, a manifestation of the child's disability is also a subjective and imprecise undertaking, the odds are thus unacceptably high that a child with a disability will be inaccurately determined to have committed assault and battery that is not a manifestation of his or her disability and, as a result, will be cut off from essential educational services.

My objections to allowing the complete cessation of services are heightened by the bill's failure to include adequate safeguards for the affected children. For example, there is no provision for automatic review of an IEP team's determination that the behavior was not a manifestation of the disability. This may place the children of low-income parents at particular risk of being cut off from the educational system. In addition, the factors to be considered in determining whether or not a child's behavior was a manifestation of the child's disability are highly subjective and no rules of decision are provided for the IEP team to know which way any of these factors cut.

Waivers of IDEA requirements

I firmly believe that we need to provide States and LEAs flexibility in carrying out Federal programs, including the IDEA. That is why we proposed a variety of measures to reduce paperwork and increase flexibility, which will allow all school districts, not just a small number of them, to devote more time to teaching and learning, and to be more innovative in improving results for children with disabilities. These proposals, such as those relating to streamlined due-process notices, the elimination of unnecessary testing, and the easing of fiscal tracking requirements, preclude the need for any separate authority to waive requirements of the Act.

I am therefore opposed to proposed section 613(g) of the Act, which would require the Department to waive one or more

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requirements of Part B of the IDEA for up to 10 school districts or groups of school districts. This could lead to the loss of protections and rights that are vital to ensuring the provision of a free appropriate public education, such as IEPs and due process protections, for children in those districts.

Attorney fees

I regret that H.R. 3268 includes an assault on the right of parents of children with disabilities to recover attorney fees under the IDEA when school districts are found to have violated the rights of their children under the Act. Consistent with other Federal civil rights statutes that authorize courts to award reasonable fees to prevailing parties, the IDEA currently gives courts broad discretion in deciding whether to award fees at all and, if so, in determining what fee is reasonable. Current law protects against excessive fee awards by, for example, directing courts to take into account such factors as the extent of the parents' success, the number of hours claimed, and the hourly rate normally charged in the community for similar services.

The availability of fees is essential to the vindication of many children's rights under the IDEA, which relies principally on parents, rather than the Federal Government, to ensure that individual children receive the services to which they are entitled under the Act. Many parents simply could not otherwise afford to hire lawyers to pursue their children's rights under the IDEA, particularly because most claims are for prospective relief (such as a change in placement or the provision of a particular service) rather than for monetary damages.

I therefore object to three provisions of the bill that would be highly detrimental to parents, particularly poor parents, seeking to vindicate their children's rights under the Act.

First, section 615(e)(2)(I) would make fees unavailable for work performed in connection with mediation of disputes. This broad prohibition would preclude recovery of fees for work done in preparation for mediation, even if that work is directly relevant to subsequent due process proceedings and could otherwise be included in an award of fees. The unfortunate consequence will be to prompt parents to forego mediation, a result directly at odds with the bill's laudable objective of promoting mediation as a method of resolving disputes that is less expensive, less contentious, and less time-consuming for both parents and school districts. It will also force courts to determine which legal services were "in connection" with the mediation.

Second, section 615(i)(3)(F)(iv) would require a reduction of attorneys' fees if the parents did not provide the school district a written "statement of concerns", presumably before

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filing a due-process complaint. This cryptic language is overly broad and implies that parents would have to identify in writing every possible "concern" that might come up in the course of their relationship with a school district. Its effect would be to force parents to hire a lawyer before they file a complaint in order to make sure that their complaint is comprehensive. In addition to making due process even more time-consuming, costly, and contentious than it currently is, this would present an all-but-insurmountable barrier to poor parents seeking to protect the rights of their disabled children. Although I do not believe that any new provision is needed on this point, I would not object to a simple requirement that parents give advance notice of their intention to file a complaint. The House bill, however, is far too onerous.

Third, section 615(i)(3)(F)(v) would require that fee awards be in proportion to the issues on which the parents prevailed. This standard is inconsistent with 42 U.S.C. 1988, which is the attorneys' fees provision for legal actions under the civil rights laws. The IDEA currently takes the same approach as section 1988, which simply permits reasonable attorneys' fees for a prevailing party. The House bill would create a disincentive to raise all necessary issues and could impede the ability of the court to reach a fair resolution or result in piecemeal litigation. Moreover, notwithstanding its apparent mathematical precision, it can be virtually impossible to apply in a case involving multiple related claims. In its 1983 decision in Hansley v. Eckerhart, the Supreme Court rejected the standard set out in the bill in favor of a standard based on the overall extent of a plaintiff's success. That is the standard that should continue to govern fee awards under the IDEA.

Part B formula

I am pleased that the House bill recognizes the need to modify the current formula for allocating Part B funds to the States, which is based on the number of children with disabilities who received special education services, and that it includes a variation on our proposal to allocate funds on the basis of the total population of children, both disabled and non-disabled, in each State. Instead of adopting our proposal to apply this new approach only to funds above the 1995 level, however, the House bill would apply the new formula (including an element tied to poverty) to a gradually increasing portion of all Part B funds, so that it would govern the allocation of 100 percent of those funds 10 years from now. I continue to believe that the Administration's proposal is a less disruptive way to move to a new allocation method. I would, however, support the deletion of language that would treat Puerto Rico differently than other jurisdictions by restricting only its allocation, and I would be happy to work with the Committee to ensure that the formula for

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allocating funds is fair to Puerto Rico, as well as to all the States and other jurisdictions.

State improvement grants

I applaud the House bill for proposing a separate program that is specifically designed to help States examine a variety of Statewide issues relating to the education of children with disabilities and to make needed reforms on a systemic basis.

I am particularly pleased that the program that would be authorized by the new Part D of the IDEA includes a rigorous focus on performance and results that is needed to make sure that this program actually brings about changes that benefit children with disabilities. Similar to the Administration's proposal, for example, it would require States to analyze the performance of children with disabilities on State assessments and to develop strategies for holding local school districts accountable for results.

I also agree with the sponsors of the House bill that, for a Statewide reform program to produce the changes that will lead to better results for children with disabilities, it needs to ensure that participating States devote considerable attention and resources to the area of professional development. However, the bill's requirement that each State use at least 75 percent of its funds under this new program for professional development is excessive. It will unduly constrain State flexibility and is inappropriate to impose on all States, many of which are already using other funds for professional development. A 50 percent reservation, as proposed by the Administration, would guarantee a major focus on professional development without unduly limiting State discretion. I also recommend that the bill require some of these funds to be devoted to professional development in the area of early intervention, so that that important area is not slighted.

Professional development

Several revisions are needed to the bill in the important area of professional development. With respect to Part B, I urge the deletion of section 612(a)(13)(C), which would allow States to temporarily waive the requirement that personnel serving children with disabilities meet State standards that normally apply, if there is a shortage of qualified personnel in a particular geographic area, without any assurance that the quality of services provided to children will not decline. This authority, which could easily be abused, could result in children being served by unqualified individuals and the application of inconsistent standards within the same State.

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With respect to both Part B and the program for infants and toddlers with disabilities under current Part H (to be redesignated as Part C), the bill would drop the current requirement that participating States implement comprehensive systems of personnel development to ensure, among other things, that there is an adequate supply of qualified special education teachers and other categories of personnel needed to serve children with disabilities. If States participate in the new program for systemic State reform, the requirements of that program relating to the preparation and skills of personnel would suffice. But if some States choose not to participate in that program, or if Congress does not provide appropriations for it, then Parts B and H should continue to require systems for personnel development, along the lines of the Administration's proposal.

Finally, the authority for the discretionary grant programs, to be relocated in Part D of the Act, needs to clearly articulate the important role that the Federal Government will continue to play in assisting States and school districts in meeting their needs for qualified personnel. In addition to carrying out broad-based activities that will improve practice among special education personnel generally and address issues that cut across States, the Department should be given clear authority to address the need for the development of two categories of professionals that are unlikely to be adequately met by non-Federal resources: those serving children with low-incidence disabilities and those who will fill such leadership positions as administrators, researchers, and teacher trainers.

Policy letters

I strongly object to proposed section 605(c)(3) of the IDEA, which would bar anybody from using any policy letters or other correspondence from the Department that interprets the IDEA or the regulations under it for any purpose in any due-process proceeding, or in any compliance review by the Department or any State educational agency, except in a proceeding or review involving the particular facts or agency that were addressed in that correspondence. This provision is evidently based on the erroneous belief that the Department uses its correspondence with individual States, school districts, and parents to establish new legal requirements that it then applies throughout the Nation. In fact, the Department's policy letters, which are generally prepared in response to specific questions posed by interested agencies and individuals, merely explain what current law already requires. These letters are, however, very helpful, both to the particular individuals or agencies to whom they are addressed, and to the thousands of school districts, parents, and others who carry out, or benefit from, the Act on a daily basis. They also provide useful guidance to hearing officers and courts who must

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apply the Act to cases that are similar to those addressed in those letters.

The House bill, however, would force all these agencies and individuals to act as if the Federal agency that administers the Act (and that would continue to be obligated by section 617 of the Act to provide technical assistance to the States in carrying out the Act) had never spoken, even though the immediately preceding paragraphs of the bill require the Department to "widely disseminate" information about these letters and to publish quarterly lists of them in the Federal Register. Knowing that the Department has already stated its understanding of the law on a particular issue to somebody else, anybody who wanted to make use of the Department's views on that issue (including a hearing officer or judge) would nonetheless have to send in their own request. The unfortunate results will include increased and unnecessary burdens on parents and school officials to individually request guidance from the Department, the potential for increased litigation in the absence of that guidance, and a substantial and wasteful increase in demands on the Department's administrative resources.

I would also strongly oppose an amendment, which I understand may be offered, that could require the Department to follow notice-and-comment rulemaking procedures whenever it issues interpretative rules. This extraordinary and unprecedented requirement would make it all but impossible for the Department to provide timely guidance to States, school districts, parents, special educators, and others in response to their requests, and would significantly hamper the Department's ability to protect the rights of children under the Act.

Streamlining notice requirements

I am disappointed that H.R. 3268 fails to adopt the Administration's proposal to streamline notice requirements by reducing the amount of information concerning certain topics that must be given to parents on the various occasions, such as a proposed change of a child's placement, on which a school district must give advance notice to the parents. We proposed that, in most situations, that notice, while providing most of the information required by the current statute and regulations, would have to provide only a summary of the procedural safeguards relating to due-process hearings, State-level appeals, civil actions, and attorney fees. A full explanation of those safeguards would be provided whenever the parents request it or whenever they file a complaint. Similarly, we proposed that school districts be required to provide parents a comprehensive explanation of the safeguards concerning access to educational records when requested by the parents, rather than as part of every notice. These proposals will benefit parents by ensuring that they receive "user-friendly" notices with the information

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they need when they need it and that they are not overwhelmed by lengthy and legalistic statements of all their rights on multiple occasions, and benefit LEAs by allowing them to substantially shorten the routine notices they must provide. The House bill, however, would continue to require a full explanation of these safeguards at every IEP meeting, at initial referral for evaluation, and whenever parents file a complaint, even if there is no indication that parents need all this information at that time.

Discretionary grant programs

In addition to my concerns with professional development outlined above, I believe that the bill fails to provide a sufficiently clear and comprehensive statement of the important Federal role that the discretionary programs are meant to fill in such areas as research, technical assistance, and outreach, and that the activities authorized by the bill are too narrow. For example, I urge the Committee to add to Part D explicit authority for community parent resource centers along the lines proposed by the Administration. These centers would provide valuable services to parents, particularly minority and low-income parents, who need information and assistance in helping their children obtain needed services, and who are unlikely to get that information from other sources, including the State-level parent training and information centers that would continue to be authorized by the bill.

I also recommend that the Committee include language to clearly authorize the Department to support the development and promotion of technology that can help improve educational results for children with disabilities. The IDEA should continue to support activities in this important area.

Infants and toddlers with disabilities

I urge the Committee to add to the bill the Department's proposed changes that would make it easier for States to extend services to infants and toddlers who are at risk of developmental delay. Our proposal would not require any State to serve more children or change the way States are currently serving at-risk children. Instead, it would give States that wish to serve at-risk children, but that do not wish to provide the full array of services required under current law, the option of using program funds to provide service coordination to link at-risk children with appropriate service providers. Giving States more flexibility to serve at-risk children would: (1) help to prevent further developmental delays and secondary disabilities; and (2) increase the likelihood that infants and toddlers with disabilities are identified as early as possible. Our proposal would also continue the explicit authority for the Federal Interagency Coordinating Council, which has played an important

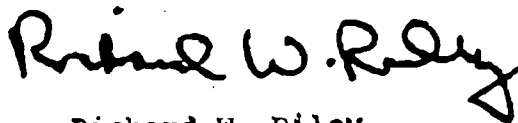
Page 11 - Honorable William F. Goodling

role in helping to ensure that the numerous Federal agencies and programs that support infants and toddlers with disabilities and their families work together effectively.

I applaud you and the other members of the Committee for acting quickly on this vital legislation, and I urge you to report out a bill that reflects the views I have expressed. We would be happy to work with the Committee to address our concerns.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

A handwritten signature in black ink, reading "Richard W. Riley". The signature is written in a cursive, flowing style with a large, stylized "R" and "W".

Richard W. Riley



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

Lakshmi-
I got this from
HHS on FAS - I haven't
really read it yet
if it's useful
Diana

FACSIMILE

DATE _____

TO: sure (NAME, ORGANIZATION, CITY/STATE AND PHONE NUMBER):

Diana Fortner

FROM; (NAME, ORGANIZATION, CITY/STATE AND PHONE NUMBER):

Mary Beth Donahue
Deputy Chief of Staff
DHHS

690-6133

RECIPIENT'S FAX NUMBER () 5576

NUMBER OF PAGES TO SEND (INCLUDING COVER SHEET): 15

COMMENTS:

I highlighted sections
responding to Federal activity
in response to 1 of FAS

FETAL ALCOHOL SYNDROME

h research. For example, human primates has demonstrated, while alcohol is the reduce FAS in humans or at every fetus exposed to es might be modulated by nutrition, threshold, tim- or fetal resilience. Fur- influence the expression

men and their partners, as at excessive alcohol con- in the occurrence of sub- ence of FAS, and an in- viduers about alcohol and s's Healthy People 2000

INTRODUCTION

21

United States hit a low of 225 in 1988. As another example, new findings that folic acid deficiency during pregnancy can result in neural tube defects have led to recommendations that grain be fortified with folic acid to prevent these birth defects. Availability of effective prevention strategies led to public policy debates and recommendations for action.

The emergence of crack cocaine as a major medical and public health problem in the 1980s led to worries about a generation of crack babies who would cost the medical care system, primarily neonatal intensive care wards, huge amounts of money and who would overburden the education and social service systems with problems attributable to prenatal exposure to cocaine. Further research has shown that crack cocaine can lead to serious obstetrical complications and that some of the exposed newborns do have problems. Cocaine-exposed children have not been followed as extensively or for as long a time as alcohol-exposed children; what data have been published show some effects of prenatal cocaine exposure at three years of age, but the problems do not seem to be nearly as devastating as predicted, nor as severe as the long-term problems associated with



Direct spending on FAS in HHS appears to be about \$24 million a year:

NIH...	\$15 M
CDC...	6 M
IHS...	3 M
Sub..	\$24 M

Relevant to Fetal

87 baseline	Target 2000
22	0.12
%	Increase by 20%
%	75%
%	75%
%	75%
%	75%

THE FEDERAL RESPONSIBILITY FOR FAS RESEARCH

As will be described in many parts of this report, FAS is a complicated health and social problem, involving many different sectors of the government. The U.S. Public Health Service (USPHS) contains the agencies with primary responsibility for research in the area. The National Institute on Alcohol Abuse and Alcoholism (NIAAA) of the National Institutes of Health (NIH) has the lead role in research on FAS. However, NIAAA is a relatively small institute of NIH. The NIAAA appropriation in 1993 was \$177 million, compared with more than \$400 million for the National Institute on Drug Abuse (NIDA) and slightly less than

\$2 billion for the National Cancer Institute (U.S. Department of Health and Human Services, 1993). NIAAA programs related to FAS include very basic animal research, which has been the mainstay of research in this area; clinical and epidemiologic research on the effects of low to moderate alcohol use by pregnant women; and prevention research. The alcohol and pregnancy program at NIAAA included \$9.8 million to \$13.5 million for approximately 70 grants in each of fiscal years 1990-1994. Most of these research grants were RO1, investigator-initiated awards. NIAAA funds one fetal alcohol research center.

In addition, many research programs sponsored by NIAAA have ancillary importance to FAS, for example, the research it funds on the epidemiology of drinking by women or on general approaches to the prevention and treatment of alcohol abuse. As an example of the level of commitment by NIAAA to this issue, the prevention research program at NIAAA has ranged from \$15 million to \$19.8 million annually in recent years. As the lead research agency on alcohol, the institute and the USPHS can serve as a bully pulpit for the prevention of FAS and other alcohol-related problems. In fact, this has been the case. The U.S. Surgeon General first issued a warning against the dangers of alcohol during pregnancy in 1981. In addition to funding and conducting research, NIAAA publishes information for the public on FAS, sponsors research workshops on FAS, and has its staff speak at public meetings.

Other NIH institutes fund research relevant to, but not directly about, FAS. For example, NIDA funded a \$4 million National Pregnancy and Health Survey on substance abuse, including alcohol, during pregnancy. The data on alcohol were a small part of the entire project. In addition, NIDA funds epidemiologic and clinical research on the effects of substance abuse during pregnancy, and alcohol is frequently one of the substances used by these populations. A rather large study funded by NIDA was the Perinatal 20 demonstration project assessing prevention of substance abuse during pregnancy. Although the major purpose was to look at the abuse of illegal substances, some data were collected on alcohol use, as well.

Another key USPHS agency involved in FAS work is the Centers for Disease Control and Prevention (CDC). The FAS Prevention Section is housed in CDC's National Center for Environmental Health, Division of Birth Defects and Developmental Disabilities. CDC's role is to collect data to define the scope of the problem; support the development and evaluation of FAS prevention projects; and build state capacity for coordinated, state-based FAS surveillance and prevention programs (CDC submission to IOM committee). The CDC maintains and analyzes surveillance programs that include FAS, such as the Birth Defects Monitoring Program. In addition, CDC sponsors and supports efforts to prevent FAS. The CDC currently has FAS prevention and surveillance projects supported through states and universities. As with NIAAA, CDC has ancillary programs related to maternal and child health, alcohol abuse, and epidemiologic surveillance that can support and inform FAS programs.

Other agencies in the US but these programs have much. Service, the Health Resource Substance Abuse and Mental services or demonstration pro time, no agency has been able on the medical treatment o remediation of these children

A notable USPHS prog Their Infants (PPWI) initiati Abuse Act, passed by Cong focuses on the development prevention, education, and tr and their infants (National C 1993). The program is funde tion (CSAP) of SAMHSA ar It has funded 147 demonstrat cocaine, followed by alcohol are rigorously evaluated only of their findings are difficult

The Center for Substan was charged by Congress to stance abuse treatment for (information provided to the 20 states in the PPWI prog Treatment for Women and T that serve Native American FAS. In addition, CSAT ha Protocols, relevant to FAS, opiates, not alcohol.

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Other agencies in the USPHS maintain important programs related to FAS, but these programs have much less emphasis on research. The Indian Health Service, the Health Resources and Services Administration (HRSA), and the Substance Abuse and Mental Health Services Administration (SAMHSA) fund services or demonstration projects directly or indirectly related to FAS. At this time, no agency has been able to support research on the clinical aspects of FAS, on the medical treatment of children with FAS, or on the education and remediation of these children.

A notable USPHS program is the Pregnant and Postpartum Women and Their Infants (PPWI) initiative. This program was authorized by the Anti-Drug Abuse Act, passed by Congress in 1988. The demonstration grant program focuses on the development of innovative, community-based models of drug prevention, education, and treatment, targeting pregnant and postpartum women and their infants (National Center for Education in Maternal and Child Health, 1993). The program is funded jointly by the Center for Substance Abuse Prevention (CSAP) of SAMHSA and the Maternal and Child Health Bureau of HRSA. It has funded 147 demonstration projects. The most common drug addressed was cocaine, followed by alcohol and polydrug use. Because demonstration projects are rigorously evaluated only infrequently, the nature, utility, and transferability of their findings are difficult to assess.

The Center for Substance Abuse Treatment (CSAT), a part of SAMHSA, was charged by Congress to support grants for residential and outpatient substance abuse treatment for pregnant and postpartum women and their infants (information provided to the committee). CSAT funded 31 residential projects in 20 states in the PPWI program and 34 projects in 24 states in its Residential Treatment for Women and Their Children program. The five treatment programs that serve Native American women include comprehensive services specific to FAS. In addition, CSAT has other activities, such as its Treatment Improvement Protocols, relevant to FAS, but the abuse substance of focus is usually cocaine or opiates, not alcohol.

CONGRESSIONAL INTEREST

In recognition of the seriousness of this problem, which affects both the health and the societal functioning of many Americans, several times in the past few years, members of Congress have introduced legislation related to FAS (see Table 1-2). The bills have focused largely on creating an interagency task force on FAS and increasing resources for prevention programs and prevention research. These bills, with one exception, have never been passed. The U.S. Congress mandated in Section 705 of Public Law 102-321, the ADAMHA Reorganization Act, that the Institute of Medicine (IOM) of the National Academy of Sciences conduct a study of FAS and related birth defects. The National Institute

HEALTHY PEOPLE 2000

*National Health Promotion and
Disease Prevention Objectives*

CONFERENCE EDITION

Health Status Objective: Fetal alcohol syndrome

PHS Agency Assignment: Health Resources and Services Administration

14.4 Reduce the incidence of fetal alcohol syndrome to no more than 0.12 per 1,000 live births.

Fetal Alcohol Syndrome (per 1,000 live births)	Baseline Year	Baseline	1988	1989	1990	1991	1992	1993	2000 Target
Total population	1987	0.22	0.30	0.32	0.40	0.37	0.52	0.67	0.12
Special Population Targets									
14.4a American Indians/Alaska Natives	1987	4.0	4.6	2.0	5.2	---	---	---	2.0
14.4b Blacks	1987	0.8	1.1	1.4	1.4	1.9	2.3	5.4	0.4

Data Source: Birth Defects Monitoring System, CDC, NCEH.

Barriers and Strategies

- 14.4 Reduce the incidence of fetal alcohol syndrome to no more than 0.12 per 1,000 live births.**

Data Source: Birth Defects Monitoring System, NCEH, CDC (1979-1993); Health Uniform Billing Data and State Birth Defects Registries, NCEH, CDC (1994-2000).

Barriers:

Surveillance

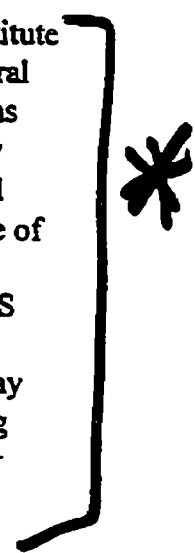
- While birth is the most opportune time to diagnose children with birth defects, there are difficulties associated with FAS diagnosis which preclude this being as effective for FAS as for other birth defects. These include difficulty in ascertaining facial characteristics in the newborn; inability to fully evaluate CNS damage; reluctance of physicians to assign the diagnosis without confirmation of maternal alcohol exposure.
- A more optimal time for diagnosing FAS is between the ages of 3 and 8. However, screening of children in this age group requires establishment of special projects which are both labor intensive and costly.
- The current ICD-9 diagnostic category for FAS lacks precision and can be used to designate both exposure and outcome. Thus, many times the code is found to designate a woman who drank during pregnancy in instances when the infant has not been given a diagnosis of FAS.
- Vital statistics data have not proven to be good sources of FAS data, and must be augmented by other data sources, which then require documentation to ascertain accuracy of diagnosis.

Prevention

- Childbearing age women are often not screened for alcohol use, or when they are screened, they are not asked questions which enhance optimal disclosure.
- Health care providers are not familiar with standardized screening instruments developed for identifying problem drinkers, nor have the providers been trained in effective ways to counsel and refer women who screen positive for alcohol abuse.
- Few well-designed clinical trials have been done testing interventions that assist pregnant drinkers in achieving abstinence.

Strategies:

Fetal Alcohol Syndrome (FAS) represents the most severe point on the continuum of adverse effects of prenatal alcohol exposure. Recent estimates range from .7 to 1 per 1,000 live births in the general population, with higher rates among selected sub-populations (i.e. American Indian/Alaska Native rates have been documented at 2-3/1,000 live births). A number of recent studies have found that approximately 1 in 20 women report some amount of alcohol use during pregnancy, with approximately 22,000 per year reporting use at levels which have been found to result in growth and neurodevelopmental defects in the offspring. Strategies for reducing FAS as well as other physical and neurodevelopmental effects of in utero alcohol exposure requires activities in surveillance of both outcome and exposure. Such information provides guidance for program development and for evaluation of program effectiveness. Prevention activities must be both general and specific. A recently released report on FAS from the Institute of Medicine (IOM) recommends global prevention strategies which target the public in general with messages regarding adverse consequences of prenatal alcohol use; target sub-populations with higher rates of exposure and outcomes with increased screening and referral; and finally provide individuals with evidence of alcohol abuse or who have FAS or other alcohol-related effects with enhanced service options and intensive case management. Enhanced surveillance of FAS has occurred through funding support and technical assistance provided to states and universities as well as through intramural research efforts at a number of HHS agencies. HHS agencies also fund public education efforts of local and national scope aimed at increasing awareness of prenatal alcohol damage, and a number of clinical studies are currently underway exploring innovative approaches to targeting and intervening with non-pregnant, childbearing age women who are heavy alcohol users, and pregnant women who report preconceptional or current alcohol use.



MATERNAL AND INFANT HEALTH

Infant mortality is an important measure of a Nation's health and a worldwide indicator of health status. Compared with other industrialized nations, the United States ranks 24th in infant mortality rate (1991). The objectives in the Maternal and Infant Health priority area of HEALTHY PEOPLE 2000 seek to reduce the tragedy of more than 33,000 babies dying before their first birthday.

One of the most effective ways of ensuring successful birth outcomes and a healthy first year of life is making sure that every child is planned and wanted. Women should begin prenatal care in their first trimester of pregnancy and avoid the hazards of smoking and drug and alcohol consumption while pregnant. As the Institute of Medicine's *Access to Care* report shows, "prenatal care is a good investment—for every dollar spent, more than three are saved." The challenge is to ensure that prenatal care is accessible and provided in a culturally and linguistically sensitive manner.

The Report to Congress on Fiscal Year 1991 Maternal and Child Health Activities and Health Status is the first report to Congress using HEALTHY PEOPLE 2000 indicators for Maternal and Child Health Block Grant program activities. This report characterizes the attainment of the year 2000 targets as challenging and shows, as does this midcourse review, that results are mixed: Some objectives show progress while others are moving away from targets. Initiatives such as Healthy Start, which seeks to reduce infant mortality by 50 percent in selected communities, and SPRANS grants for research, training, and service demonstration projects help build the knowledge and science base to improve the health of mothers and children. Through partnerships with States using \$664 million in Maternal and Child Health Block Grant funds, and with Medicaid, Head Start, and the Women, Infants and Children Supplemental Feeding Program, systems of preventive population-based services make a difference in propelling changes in the health of mothers and their children.

Review of Progress

Although the infant mortality rate has reached record low levels, 8.5 per 1,000 live births in 1992, the rate for blacks is 2.4 times that of white infants. The disparity in infant mortality rates between blacks and whites has not narrowed between 1987 and 1992. Among Hispanics, Puerto Ricans have the highest infant mortality rates; unlike the other Hispanic population groups, their infant mortality rates have risen over the past 5 years. Fetal mortality rates have declined slightly while maternal mortality rates have risen.

Low birthweight and very low birthweight rates have increased, with 7.1 percent of babies being born under 5.5 pounds (2,500 grams) and 1.3 percent of babies weighing less than 3.3 pounds at birth (1,500 grams) in 1992. The increase in low birthweight is due largely to the steady increase of preterm births since 1981. However, more recent interventions such as surfactant treatment have improved survival of low birthweight infants.

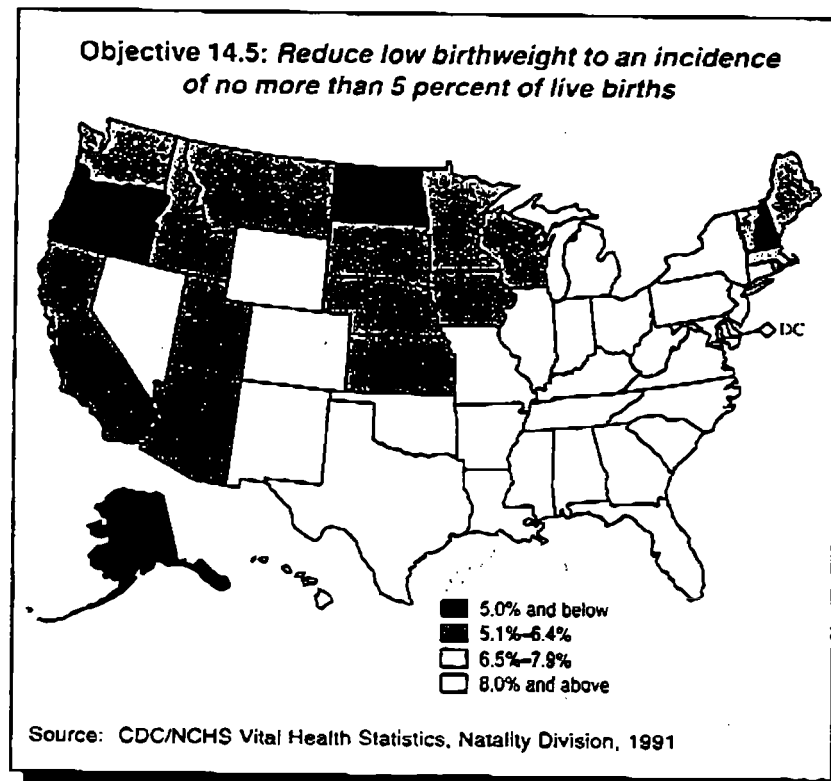
Progress by HEALTHY PEOPLE 2000 Priority Area

Severe complications of delivery have decreased sufficiently to meet the year 2000 target. Cesarean delivery rates also have fallen. While the percent of women abstaining from tobacco use has moved toward the target, the number abstaining from alcohol was 81 percent in 1993. One indicator of alcohol use during pregnancy—the number of babies born with fetal alcohol syndrome—has increased. The number of hospitals participating in the Birth Defects Monitoring Program, which is the source of data for this objective, has declined. However, this increase may in part be explained by improved identification and reporting. One measure showing progress is the percent of women gaining the recommended weight during pregnancy. Some 75 percent of women achieved optimal weight gain.

Another objective moving in the right direction is the percent of women who breastfed their infants during the early postpartum period. While 56 percent of all women were breastfeeding in 1993, a 2 percent gain from the baseline established in 1988, there has been more progress among racial and ethnic minorities. Among black mothers, 31 percent were breastfeeding in the early postpartum period; among Hispanics, 56 percent were breastfeeding; and among American Indians/Alaska Natives, 51 percent. The gains among these women are beginning to narrow the gap with the total population. There has been little progress among women breastfeeding 5 to 6 months postpartum.

A 1992 Primary Care Providers' Survey shows the extent to which clinicians are routinely inquiring about family planning of female patients of childbearing age or providing counseling about family planning. Among pediatricians, 18 percent reported that they routinely inquire about family planning, while 36 percent reported that they routinely counsel about family planning. For other providers the findings were: family physicians, 28 percent and 36 percent; obstetricians/gynecologists, 48 percent and 65 percent; and nurse practitioners, 53 percent for both services.

For several objectives there are no consistent tracking data sources. Baselines have not been established yet for the objectives seeking to increase the proportion of pregnant women and



Healthy People 2000 Midcourse Review and 1995 Revisions

infants who receive risk-appropriate care and the percent of babies who are receiving recommended primary care services at the appropriate intervals. No update is available for women receiving screenings for fetal abnormalities.

While a summary statistic is not available on the percent of newborns being screened and treated for genetic disorders, two measures show significant increases in screening. Based on 43 States reporting in 1993, 89 percent of infants were screened for sickle cell disease. In the 38 States reporting, 97 percent of infants were screened for galactosemia.

1995 Revisions

A new objective has been added to track the incidence of spina bifida and other neural tube defects (NTDs). This objective, in place for the 1980s, seeks reductions in birth defects. The potential to reduce spina bifida and other NTDs by 50 percent is suggested by data showing the association of risk reduction with consumption of 400 micrograms of folic acid prior to pregnancy.

Several special population targets have been added: reductions in low birthweight and very low birthweight for Puerto Ricans; and decreased pregnancy complications for blacks.

The targets for objective 14.10 for marijuana and cocaine have been revised to 100 percent. New baseline data show that 99 percent of pregnant women abstain from cocaine use and 98 percent abstain from using marijuana.

**Centers for Disease Control & Prevention
Fetal Alcohol Syndrome Prevention Section
Fetal Alcohol Syndrome Surveillance & Prevention Project
FAS Cooperative Agreements**

F4T

Colorado

Colorado is building upon the currently existing Colorado Registry for Children with Special Needs to provide improved FAS surveillance among children from birth to age seven. Another major program effort involves increasing ascertainment of problem drinking and providing counseling services to women of childbearing age, in both educational settings (high schools) and public health programs (prenatal, WIC, family planning). Other activities include FAS educational campaigns directed at both service providers and the public, following and interviewing mothers of children diagnosed with FAS, and working with high risk teen in the Department of Children and Youth Services.

Georgia

A major program goal in Georgia is to increase collaboration and networking among institutions, agencies and community-based programs which address alcohol use and abuse by women of childbearing age. This activity will help identify available resources as well as involve many institutions in the design of an approach to FAS prevention. Other priority activities are conducting a training program for health care professionals, developing a statewide resource guide for professionals, and exploring the use of existing data collection systems to conduct surveillance of FAS. Responsibility for the program is shared between the Women's Health Unit and the Office of Perinatal Epidemiology of the Division of Public Health.

Oklahoma

Oklahoma is implementing a comprehensive FAS Prevention Program. It includes: 1) identifying pregnant women who are problem drinkers and referring them for care; 2) coordinating the efforts of various agencies to ensure for their care; 3) targeting women of childbearing age with problem drinking for treatment and reproductive health services; and 4) improving FAS surveillance. The interagency efforts incorporate a variety of strategies: incorporating pregnancy testing and prenatal referral into alcohol treatment center protocols; implementing a preconceptual project in a university setting; investigating a passive surveillance system for monitoring FAS in newborns; and developing a resource directory for prenatal care providers of services to women with alcohol abuse problems.

Missouri

Missouri has established an interagency FAS coalition which coordinates FAS activities in the state. Over time, this project has evolved into one that is educational in nature, and focuses on training WIC providers to increase their ability to ascertain women who are heavy alcohol users, (or if pregnant using alcohol at all), and institute proper follow-up.

Washington

Washington is developing FAS prevention projects in King County and among two Native American tribes. In addition, it is involved in a descriptive study of the mothers of children diagnosed with FAS at the University of Washington School of Medicine's FAS Clinic. In King County, an assessment of resources needed for the treatment of children with FAS is being conducted. Using information from both projects, a model program for early identification, referral, tracking and prevention will be developed and piloted. The state project also plans to conduct a needs assessment of activities in the rest of the state and to encourage the development of local FAS Prevention Task Forces. Prevention approaches which work in the pilot projects will be disseminated to the rest of the state.

University of Cincinnati

The University of Cincinnati has been funded to design and test an antenatal intervention program aimed at identifying women who are using alcohol prenatally and providing a broad array of informational and support services. Elements of the intervention include educational sessions, in-depth case management, parenting classes, support during labor and the immediate postpartum period, and gift incentives for participation. The ultimate goal of the study is to bring about abstinence during the pregnancy. The study design is a randomized controlled trial testing the intervention against usual care. Participants will be drawn from a variety of clinical facilities in the greater Cincinnati area. Another major objective of the study is to train health care providers in the participating clinics to better ascertain alcohol use among clients and understand the impact of prenatal alcohol use on fetal development and infant outcomes.

University of New Mexico

The University of New Mexico proposes to make the state of New Mexico a model state in applied research, awareness, surveillance and prevention of Fetal Alcohol Syndrome through close coordination of the research project activities with other on-going programs, including the Disabilities Prevention Program. Research activities focus on three areas: 1) evaluation of techniques for population-based epidemiology and ascertainment of affected individuals; 2) definition of key indicators in high-risk women, stratified by ethnic group; and 3) determination of the efficacy of population-wide prevention efforts.

University of Washington

The University of Washington, Department of Pediatrics conducts an FAS Clinic which serves as a statewide resource for the diagnosis of children suspected of having alcohol-related birth defects. Using this clinic as the point of contact, this project will locate and interview the mothers of children diagnosed with FAS in order to identify factors that have enhanced or hindered sobriety and contraceptive use. The project will provide the mothers with referrals to alcohol treatment and family planning services. Ultimately the project will be able to assess, from the mothers' point of view, the availability of alcohol treatment and health care/family planning resources as well as barriers to access. Information from this investigation will be used to design a primary prevention program for FAS.

CDC/IHS Memorandum of Agreement (MOA) Projects

South Dakota

The current CDC/IHS Agreement specifies research projects in South Dakota only.

SAQ Validation Study

A validation study of a self-administered questionnaire (SAQ) aimed at ascertaining substance abuse among prenatal clients was funded by IHS and IRB approval granted to the PI, Loretta Badheart Bull during the time of the last MOA. CDC was asked to assist in designing the validation study. Epidemiologic assistance only was provided. CDC did pay for contractors to assist in data collection, data entry, and creation of the data base.

Under the current agreement, CDC is to continue to provide contract support for data gathering, data entry, and some analyses. A CDC epidemiologist is to provide oversight in assuring data quality, methodologic soundness, and completion of analyses necessary to the study.

Case-control Study of Children with FAS

A case-control study of children determined to have FAS through ICD-9 Codes and verification of case definition by medical records is being conducted in the Aberdeen IHS Area. IRB approval from IHS is attached. CDC's role in this is similar that for the SAQ Validation Study.

Alaska

The current CDC/IHS MOA includes no projects in Alaska. The Division has funded a cooperative agreement for establishment of a Birth Defects Registry with enhanced FAS surveillance, and a Prevention of Alcohol-Exposed Pregnancy Project among Social Services clients whose children are under Protective Services.

One remaining activity from last year is the review of charts of children identified in a case series compiled by Dr. Grace Egeland. Education and juvenile justice system charts will be reviewed for children and young adults in the cohort.

DRAFT

May 22, 1996

1:30 PM


Honorable William F. Goodling
Chairman
Committee on Economic and Educational Opportunities
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express the views of the Department of Education on H.R. 3268, the IDEA Improvement Act of 1996. This legislation would reauthorize the Individuals with Disabilities Education Act (IDEA), which plays a vital role in helping to ensure that millions of children with disabilities receive an equal educational opportunity.

I am pleased that, in many respects, this bill incorporates the major themes advanced by the Administration in its reauthorization proposal, introduced last year as H.R. 1986: improving educational results for children with disabilities by promoting their greater inclusion in the general curriculum, in general assessments, and in State and local reform efforts; focusing even more on teaching and learning by reducing paperwork and increasing administrative flexibility; and providing families and teachers with the knowledge and training they need to effectively support students' learning. I urge your Committee and the entire House to speedily pass legislation that reflects these approaches so that children with disabilities can benefit from them, and so that States, local school districts, parents, and others can promptly implement them.

While it is gratifying that H.R. 3268 embodies a substantial amount of what we have proposed, there are several significant provisions of the bill that are objectionable or that need improvement.

→ Discipline

Our nation's schools must be safe, disciplined, and drug-free. This Administration has made tremendous strides toward this goal through a variety of measures, including issuing a Presidential Directive to enforce the "zero tolerance" measures outlined in the Gun-Free Schools Act, supporting student athlete drug testing before the Supreme Court, and strengthening and expanding the Safe and Drug-Free Schools and Communities Act. Clearly, in order to maintain safe, orderly, and drug-free classrooms, schools must be able to discipline all children, including

Page 2 - Honorable William F. Goodling

children with disabilities, and teach all children to live by rules.

That is why I support the expansion of schools' authority to discipline students with disabilities and to make it clear that schools can suspend or expel students with disabilities who bring weapons and illegal drugs to school. As you know, the Administration proposed to expand current law, which allows school officials to unilaterally transfer a child with a disability who brings a gun to school to an interim educational placement for up to 45 days, to apply to other types of weapons. I am pleased that H.R. 3268 includes this proposal, and I support the bill's further expansion of this authority to cover children who bring illegal drugs to school. The use of illegal drugs is a grave threat to our children's physical and mental health, and illegal drugs have no place in our schools. The Administration's bill also proposed to allow hearing officers, rather than school personnel, to change the placement of a child who is substantially likely to cause injury, and I am pleased that H.R. 3268 includes this proposal as well. I would also support an amendment, which I understand may be offered, that would specifically allow a disruptive child's teacher to convene an IEP meeting to address the child's behavior.

Despite my support for these provisions, I have some significant concerns, described below, that proposed section 615(k) goes too far and could, therefore, greatly harm children with disabilities.

1. Alternative educational placements. I agree that school officials should be able to unilaterally transfer a child with a disability who brings a weapon or illegal drugs to school to an interim educational placement for up to 45 days. At the same time, I believe that the bill should include a clear and objective definition of the terms "weapon" and "illegal drugs", so that children with disabilities are not subject to arbitrary and unequal application of vague or subjective definitions.

My concerns about the potential for misuse of disciplinary provisions against children with disabilities lead me to object to language in the bill that would weaken the "stay put" provisions of the Act by allowing school personnel to unilaterally change the placement of children with disabilities who commit assault and battery at school. Such a change of placement could last for up to 55 school (not calendar) days (and, if the parents contest that change, until that dispute is resolved) even if the child's behavior was relatively minor, caused no injury or damage, and was clearly a manifestation of the child's disability.

I also urge the Committee to reject an amendment, which I understand may be offered, that would allow school personnel to

Page 3 - Honorable William F. Goodling

unilaterally change the placement of a child with a disability who has endangered someone's emotional health through a purely verbal assault, even if the child's outburst was a manifestation of his or her disability. While I recognize that words can sometimes hurt, this authority tips the balance far too much against children with disabilities by allowing school personnel to change their placement on the basis of highly subjective determinations about the effect of mere speech on someone's mental health.

Moreover, as I mentioned above, the bill addresses assault and battery and serious injury by including our proposal to allow hearing officers (but not school personnel) to change the placement of a child who is substantially likely to cause injury. Because this new authority is sufficient to deal with cases of assault and battery and serious injury, the bill should omit as unnecessary any separate treatment of that misconduct.

Finally, we need to remember that the sad history before the "stay put" protection was added to Federal law was that school officials routinely used disciplinary measures to remove children with disabilities simply because they were difficult to educate. We must guard against weakening the "stay-put" protection in ways that could result in the exclusion of children with disabilities from educational opportunities.

→ 2. Termination of all educational services. I think we can all agree that children need to understand the importance of following school rules and the consequences, to themselves and others, of their misconduct and that removal of children from the classroom is sometimes necessary to ensure safety and discipline. That is why I support provisions that allow schools to unilaterally remove from school students who bring weapons or drugs to school and that permit hearing officers to order speedy removal of students who are substantially likely to cause injury. I also support the use of suspension and expulsion as disciplinary measures in appropriate circumstances. At the same time, I firmly believe that children -- ~~regardless of whether or not they are disabled~~ -- who have been expelled or suspended from school will do better in the long run if they continue to receive educational services in some other setting than if they are completely cut off from those services. This approach can help keep children and youth from engaging in activities that threaten the safety of their communities.

I am, therefore, concerned that H.R. 3268 would move in the opposite direction by permitting school districts to completely terminate educational services to children with disabilities for certain misconduct if their behavior is not a manifestation of their disability and if services would be terminated for non-disabled children for the same misconduct. It is an unwarranted retreat from the goals of the IDEA, as well as from the 20-year-

Page 4 - Honorable William F. Goodling

old statutory obligation to provide a free appropriate public education (FAPE) to all children with disabilities, to permit students with disabilities to be excluded entirely from educational services. Children with disabilities whose behavior is not a manifestation of their disabilities ought, with appropriate safeguards, to be subject to the same rules and disciplinary measures as non-disabled children. However, cutting children off completely from educational services is not an effective form of punishment. Instead, it reduces the odds that these children will be productive, law-abiding members of their communities.

I am particularly opposed to the termination of services for children with disabilities who commit an "assault and battery", as the bill would permit. Determining whether a particular action, such as throwing an eraser or pushing another child on the playground, constitutes assault and battery in the school setting is a highly subjective undertaking -- especially outside the safeguards and standards of the criminal law from which the concept of assault and battery is taken -- and one that could easily be misused against children with disabilities. Moreover, certain disabilities, such as autism, cause children to engage in behavior, more frequently than other children, that could fit within a State's definition of assault and battery or that school officials may be tempted to characterize as assault and battery. Because the determination of whether a particular act was, or was not, a manifestation of the child's disability is also a subjective and imprecise undertaking, the odds are thus unacceptably high that a child with a disability will be inaccurately determined to have committed assault and battery that is not a manifestation of his or her disability and, as a result, will be cut off from essential educational services.

My objections to allowing the complete cessation of services are heightened by the bill's failure to include adequate safeguards for the affected children. For example, there is no provision for automatic review of an IEP team's determination that the behavior was not a manifestation of the disability. This may place the children of low-income parents at particular risk of being cut off from the educational system. In addition, the factors to be considered in determining whether or not a child's behavior was a manifestation of the child's disability are highly subjective and no rules of decision are provided for the IEP team to know which way any of these factors cut.

Waivers of IDEA requirements

I firmly believe that we need to provide States and LEAs flexibility in carrying out Federal programs, including the IDEA. That is why we proposed a variety of measures to reduce paperwork and increase flexibility, which will allow all school districts, not just a small number of them, to devote more time to teaching

THE WHITE HOUSE

WASHINGTON

May 20, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco *CHR/DF*

SUBJECT: Discipline for Students with Disabilities by Ceasing Services

I. ACTION-FORCING EVENT: In reauthorizing the law governing special education (Individuals with Disabilities Education Act, or IDEA), Congress is now considering whether to let schools cease all services for disabled students under certain circumstances. The Department of Education wants to oppose this plan before a House markup later this week.

II. BACKGROUND/ANALYSIS: Under current law, schools may not stop services for students with disabilities under any circumstances. They may expel them, but must provide services at home or in some setting. There is no such Federal protection for students without disabilities. The Department's IDEA reauthorization proposal did not permit cessation.

The Senate Labor and Human Resources Committee voted to allow schools to cease services to disabled students who bring drugs or weapons to school. Senator Harkin, a long-time disability champion, supported the bill in an effort to ward off tougher amendments. The House subcommittee added assault and battery to the Senate proposal.

Disability advocates strongly oppose cessation, while general education advocates are split. The two groups reached a consensus on every issue in the reauthorization except this one. The NEA and principals oppose cessation, while the AFT and the school boards support it.

Secretary Riley feels strongly that cessation is never a good idea, particularly for disabled children, who do worse when excluded from education than other children. He does support other new measures to strengthen discipline of disabled children, by making it easier for schools to remove them temporarily from the classroom.

The disability community points to the long history of schools using discipline as an excuse to remove disabled students from class. Disability advocates are very sensitive about efforts to weaken the IDEA's 20-year-old civil rights protections. They would be very disappointed if we supported any form of cessation, and see us as strong supporters of IDEA.

We consulted the staffs of Senators Feinstein, Dorgan, Lieberman, and Harkin, but could not ascertain if they would stand with us if we oppose cessation where drugs or guns are involved.

III. RECOMMENDATION: I recommend that you support Secretary Riley's plan to oppose any cessation of services for students with disabilities. This would allow schools to expel disabled students from a school as long as they get services in some other setting.

IV. DECISION:

☐ Approve ☐ Reject ☐ Further Discussion ☐ Approve with Following Changes: _____

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E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

22-May-1996 02:25pm

TO: Jennifer Palmieri

FROM: Carol H. Rasco
 Domestic Policy Council

CC: John C. Angell
CC: Jeremy D. Benami
CC: Diana M. Fortuna

SUBJECT: Message for Leon

2 strikes
Rahm-

I am sorry I cannot be here for the 4:30 p.m. discipline meeting for Special Education but I must go to the plane to fly to Nevada where I am participating in Sen. Reid's conference for Nevada Women tomorrow.

I sent a memo to the President early this week on this issue and it outlines the issues; I am assuming this meeting today replaces the memo and that Staff Secretary still has the memo. I am hopeful this can be looked at more indepth than simply an issue of "handicapped kids bringing guns and/or drugs to school." Schools under the administration proposal can expel children in special education BUT they must provide services for them in alternative settings....alternative schools, home, etc. which is not uncommon in special education for children NOT creating a disciplinary and/or safety problem. I believe we should approach with GREAT caution weakening the protections for handicapped children given that the law has not protected them / provided them with education rights for very long.

Thank you.

work on it - confusing

May 20, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

SUBJECT: Discipline for Students with Disabilities by Ceasing Services

I. ACTION-FORCING EVENT: In reauthorizing the law governing special education (Individuals with Disabilities Education Act, or IDEA), Congress is now considering whether to let schools cease all services for disabled students under certain circumstances. The Department of Education wants to oppose this plan before a House markup later this week.

II. BACKGROUND/ANALYSIS: Under current law, schools may not stop services for students with disabilities under any circumstances. They may expel them, but must provide services at home or in some setting. There is no such Federal protection for students without disabilities. The Department's IDEA reauthorization proposal did not permit cessation.

The Senate Labor and Human Resources Committee voted to allow schools to cease services to disabled students who bring drugs or weapons to school. Senator Harkin, a long-time disability champion, supported the bill in an effort to ward off tougher amendments. The House subcommittee added assault and battery to the Senate proposal.

Disability advocates strongly oppose cessation, while general education advocates are split. The two groups reached a consensus on every issue in the reauthorization except this one. The NEA and principals oppose cessation, while the AFT and the school boards support it.

Everyone, including the Department, supports other new measures to get tougher on disabled students by making it easier for schools to remove them from the classroom temporarily.

Disability advocates point to the long history of schools using discipline as an excuse to remove disabled students from class. Secretary Riley feels strongly that cessation is never a good idea, particularly for disabled children, who do worse when excluded from education than other children. Disability advocates are very sensitive about efforts to weaken the IDEA's 20-year-old civil rights protections, would be very disappointed if we supported any form of cessation, and see us as strong supporters of IDEA.

We consulted the staffs of Senators Feinstein, Dorgan, Lieberman, and Harkin, but could not ascertain if they would support -- or not attack -- us if we continue to oppose cessation even for students who bring drugs or guns to school.

III. RECOMMENDATION: I recommend that you support Secretary Riley's plan. ^{to oppose}

IV. DECISION: ^{which includes follg pts:} ^{which does allow any cess.} ^{for expelled, but placed in another} ^{further disc}
____ Approve Approve as Amended ____ Reject No Action ^{Approve w/ Following}

Dec memo - outlines in bullet

dec memo form

Review - TS summarized
history short script
so include

1 page

Sat am leave house 9:45
email

← Here Mon?

That is quite different from companies that are in trouble because of changes in the global economy and have to downsize. And I don't think -- the downsizing you have to look at company by company to see if it turned out to be a good decision, a bad decision, right or wrong. I just think that that's a very different issue.

Q Mr. President, we wanted to spend the last few minutes talking about education for our special education supplement in the Friday paper in a week-long emphasis on education in USA Today. One of the things we found in doing reporting about education is the public concern among both parents and students about safety in schools and violence in schools. Is there something you're prepared to do to try to make schools safer?

THE PRESIDENT: Well, of course, we have done a number of things. We have had the zero tolerance policy, which we have required of all schools. We have had the safe and drug-free schools money. A lot of our police officers have been used to try to help in and around school areas -- of the 100,000 police we're putting on the street. We have got this antigang legislation that is going up to Congress, which I talked about just a couple of days ago.

We're also -- I think we need to make it earlier for schools and teachers to take appropriate disciplinary actions. Now, Indiana, New York, Maryland, have given teachers and schools more authority to do that, and to remove disruptive students. And I think we should do that nationwide. And Secretary Riley is working on some things that we can do in that regard. And I think we also need stronger enforcement of the truancy laws. I think that would help a lot. And there have been a number of cities -- Oklahoma City, Charleston, and others who have worked on that.

Q So this would be federal legislation to make it earlier to remove disruptive students --

THE PRESIDENT: Well, the Secretary of Education is going to recommend to me whether we need to do anything legislatively, or whether we can just do some things that would make it clear that what the schools can do now, without running afoul of federal law.

Q Right. Like as you did with school prayer.

THE PRESIDENT: Yes, and the school uniforms, which I think also have really helped a lot in disciplinary areas where we have used them.

But those are the two things that occurred to me. We've just been talking about it, and I've asked him to come back to us with that because I think the -- for a long time, the idea was that it was really a bad thing to remove any student, no matter how disruptive, on the theory that they just get in more trouble out on the streets. But I think that now we're kind of coming back to perhaps a more balanced view, that the states that have done it are getting some good results. And we need to look at that.

Q The last thing we wanted to ask you, the real last question, is one of the things we're doing in our Friday paper is talking to a lot of people -- CEO's and students and people in all sorts of walks of life -- about teachers, the importance of teachers, the qualities that make a good teacher, and about teachers that have made a big difference in their own lives. And we were wondering if there was a teacher or teachers that stands out in your mind as having really made a difference in your life?

THE PRESIDENT: That's interesting. You know, I remember

F ① China - fji (per (HR))
MAY 15 1996

THE PRESIDENT HAS SEEN

5-15-96

② JB-A: pls. work w/ Dorskind on this.

Medicaid, including over 90% of children with AIDS). The Council expressed concern about lack of senior NIH support for consolidated budget authority of NIH Office of AIDS Research, inadequate funding for substance abuse treatment, federal policy regarding needle exchange programs, inadequate funding for AIDS housing, and the mandatory HIV testing policies of the State Department and the Peace Corps.

(D) **Rasco response on Virginia challenge to DoEd rules on expulsion of students with disabilities.** The Individuals with Disabilities Education Act does create a double

standard by barring the expulsion of disabled children, even for conduct unrelated to their disabilities, while other children get no such federal protection. Whether this is good policy is being actively debated. Disability advocates say "equal treatment" is no answer since disabilities can be manifested as behavioral problems. School boards, principals and teachers unions think the double standard encourages bad conduct by disabled kids and endangers others. DoEd opposes expulsion, but would allow schools to temporarily remove students who bring weapons to school, and would permit hearing officers to remove kids who exhibit "dangerous" behavior. The Senate Labor Committee has passed a bill allowing schools to cease services for students who bring drugs or weapons to school, and allowing hearing officers to remove students for "disruptive" behavior, a lesser standard. Some change seems likely but not as much as Virginia's regs, which go beyond the limited exceptions in the Senate plan.

①

SENATE
LABOR
COM. LOOKS
NASTY
?

(E) **Rasco memo on NEA charter schools announcement.** The NEA will provide \$1.5 million to finance 5 charter schools around the country to examine the efficacy of the charter school model. The NEA and AFT have cautiously supported charter schools but have expressed 3 concerns: 1) that charter school employees must be covered by existing collective bargaining contracts; 2) that state laws shouldn't allow charter schools to operate independently of any school district; and 3) that charter schools shouldn't be managed by for-profit firms, which could threaten the integrity of public schools. While the Administration has not taken an explicit position on these issues, Sec. Riley strongly believes that consistently defining charter schools as public schools is an essential component of our support. The NEA announcement is an important sign that they are thinking about ways to make this concept work.

Good
summary
to U.S. A
Leaders

(F) **Higgins follow-up on Oklahoma City.** James Lee Witt, working with the U.S. Attorney's Office and the Unmet Needs Committee in Oklahoma City, will take the lead in preparing a report for you on problems still facing the victims of the bombing and their families (e.g., retraining, legal reimbursement, survivor benefits, and counseling), and actions the agencies can take. The report will be ready in 90 days.

Good

(G) **Thank you from Mike Armstrong, CEO of Hughes Electronics.** Hughes is starting a new satellite business in Mexico, and, late in the day, realized that a new telecommunications agreement between the U.S. and Mexico was needed. It was negotiated in record time (10 days) and Armstrong strongly praised Hundt at FCC; Jim Jones, Ambassador to Mexico and Dan Do. Minister; Amb. Vonya McCann at State (Office of International Information Policy); and Mack, whose contributions were "dec.

JIM DORSKIND:

Please coordinate the reply.

As reply to
Hundt &
Tys to the
trans
for next sign

May 01, 1996

TO: Carol Rasco

FROM: Ken Apfel

SUBJECT: Today's meeting on the special education discipline provisions.

Attached is a memo that describes the discipline provisions in IDEA, the Administration's reauthorization proposal, and the House and Senate bills for your use.

SUBJECT: Discipline provisions in IDEA, the Administration's reauthorization proposal, and the House and Senate bills.

Discipline provisions in current law: Public Law 94-142, the Education for All Handicapped Children's Act of 1975 (now part B of the current IDEA) was enacted to address concerns about disabled students being excluded from any public education or not being provided an appropriate education.

Under current law, in order to receive federal funding, States must ensure that disabled students have access to a free appropriate public education (FAPE). Schools can not suspend or expel from school disabled students whose misconduct is a manifestation of their disability. In addition, schools can not remove disabled students for more than 10 days except when the student has brought a gun to school. This is a relatively new provision, enacted as part of the Improving America's School Act in 1994, after extensive debate. With guns, the school may remove a disabled student from school for 10 days, and then place the student in an interim alternative placement for up to 45 days. During that period, the student's Individual Education Plan (IEP) team must agree on a new placement.

ED's interpretation of current law: ED has interpreted the FAPE requirement --that States must ensure disabled students a free appropriate public education-- to mean that even if a disabled student has been expelled from school, the State must continue to provide them educational services (either at home or at an alternative educational setting).

Discipline provisions in the Administration's reauthorization proposal: The Administration's proposal retains the FAPE requirement, and expands current law by: (1) providing school districts with the authority to remove for up to 45 days disabled students who bring guns, as well as other "weapons" to school, as defined by federal law; and (2) giving impartial hearing officers, which already exist in the States for other IDEA purposes, the same authority the courts have to temporarily change the placement of disabled students who, in their current placements, are substantially likely to injure themselves or others.

Secretary Riley has put a lot of effort into garnering support for the discipline provisions in the Administration's bill, and is personally committed to defending these. Generally, there is agreement among the educational interest groups and Governors regarding the need for States to continue to provide disabled students with educational services regardless of their conduct. Among the disability-centered education groups and regular education groups, there is some disagreement regarding the flexibility schools should be provided in terms of their authority to remove disabled students in cases of weapons, drugs, or bodily injury.

Discipline provisions in the House and Senate bills:

Changing a disabled student's placement:

- **House bill** provides school personnel with the authority to unilaterally change the placement of, but not to permanently expel, a disabled student in cases of weapons, drugs, and assault or battery, as defined by the State.

- **Senate** bill provides principals, with a recommendation from an IEP team, with this authority, where weapons, drugs, and “behavior likely to result in serious bodily harm” are defined by federal law. The Senate bill also provides principals with the authority to remove (not clear for how long), after meeting various conditions, disabled students who are seriously disruptive.

ED argues that it is more appropriate to provide hearing officers, rather than school personnel, with the authority to change the placement of disabled students likely to cause injury since they are expected to be more objective.

ED is not likely to object to incorporating “illegal drugs” into the list of reasons why schools could remove disabled students to alternative educational settings for up to 45 days, though they have not said this publicly.

Also, ED argues that the bill should include clear and objective definitions of “weapons” and “illegal drugs,” so that disabled students are not subject to arbitrary applications.

Cessation of educational services to disabled students:

- **House** bill provides schools with the authority to cease all services to disabled students whose conduct is not a manifestation of their disability, in cases of weapons, drugs, and assault or battery.
- **Senate** bill provides schools with this authority in cases of weapons or drugs.

The Administration's bill would require schools to continue to provide educational services to disabled students who are removed from school, while their placement is being reviewed.

ED argues that studies show that the educational results for disabled students who are excluded from educational services are significantly worse than for non-disabled students who are excluded from those services.

Relation of misconduct to disability:

- Under both the **House** and **Senate** bills, the decision regarding whether or not the student's misconduct is “related” to their disability would be made by the IEP team, without any automatic review by a hearing officer.

ED argues that since determining whether a particular act was or was not a manifestation of a disability is highly subjective, it is likely that many will be unjustly cut off from educational services. Neither of the House or Senate bills provide: (a) adequate guidelines for determinations; or (b) an automatic review of an IEP team's determination.

DISCIPLINE ISSUES IN IDEA REAUTHORIZATION

	Cessation	Stay-put
Current Law	No	Guns Removal for up to 45 days ("Jeffords amdt")
Dept. of Education proposal	No	Add weapons to above Hearing officer can remove if "dangerous"
Senate	For drugs or weapons, if not a manifestation of child's disability	Removal for "disruptive" behavior (lesser standard than "dangerous") Includes some protections
House	Same as Senate, plus assault & battery Allows for state definition of terms	??
Dept. of Education draft reaction	Cessation bad, but particularly fight assault & battery and state definition of terms in House bill	??

Carol:

I thought the attached matrix might be handy to us as we wade through this discipline issue. I still have a few blanks to fill in on "stay-put."

Diana

DISCIPLINE ISSUES IN IDEA REAUTHORIZATION

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

APR 26 1995

OSEP- 95-16

OSEP MEMORANDUM

TO : Chief State School Officers

FROM : Judith E. Heumann *J. Heumann*
Assistant Secretary
Office of Special Education and
Rehabilitative Services

Thomas Hehir *TH*
Director
Office of Special Education Programs

SUBJECT: Questions and Answers on Disciplining Students with
Disabilities

The purpose of this memorandum is to provide guidance about the current legal requirements of the Individuals with Disabilities Education Act (IDEA) for addressing misconduct of students with disabilities and to correct the misunderstanding that students with disabilities are exempt from discipline under current law. This memorandum also includes a discussion of the recent amendments made to IDEA by the Improving America's Schools Act and the recently enacted Gun-Free Schools Act as they apply to students with disabilities who bring firearms to school. If changes are made to current law in the reauthorization of the IDEA, further guidance will be issued to reflect them.

Two other Federal laws that are enforced by the Department's Office for Civil Rights (OCR)--Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (ADA), Title II--also govern school districts' obligations to provide educational services to disabled students. Unless otherwise noted, compliance with the IDEA requirements as set forth in this memorandum would satisfy the requirements of Section 504 and Title II of the ADA.

Public Law 94-142, the Education for All Handicapped Children's Act of 1975 [now Part B of IDEA] was enacted to address concerns that disabled students, particularly those whose disabilities had behavioral components, were excluded from any public education or were not provided an education appropriate to their unique learning needs. Thus, IDEA recognizes the right of each disabled

Page 2 - Chief State School Officers

student to a free appropriate public education (FAPE), which includes an array of rights and procedural protections for eligible students and their parents. One of the central tenets of IDEA is the requirement that each disabled student's program and placement must be individually designed to meet his or her unique learning needs. Today, as school safety takes on increasing importance for all of us, we want to underscore the compatibility of guaranteeing the rights of students with disabilities with the goal of school safety.

Clearly, school safety starts with the commitment of every student to take full responsibility for his or her own safety and the safety of others both in and out of school. This commitment to personal responsibility is essential to ensuring that the goal of safe schools is realized. For any student who misbehaves, a school should decide what action is most likely to correct the misconduct. For a disabled student, this decision may need to take into account the student's disability.

As we travel throughout the country, we have met with parents and school officials, who have underscored the importance of working cooperatively to address concerns when signs of misconduct by students with disabilities first appear before more drastic measures are considered. We also have visited schools that have implemented models for behavior management so effectively that, in many instances, the need for subsequent interventions has been greatly reduced, or even eliminated entirely. The Department encourages and supports the development and dissemination, at the local, State and national levels, of effective classroom and behavior management practices. We also believe that there are a number of positive steps that educators can take to address misconduct as soon as it appears to prevent the need for more drastic measures. For students whose disabilities have behavioral aspects, preventive measures, such as behavior management plans, should be considered and can be facilitated through the individualized education program (IEP) and placement processes required by IDEA. Teacher training initiatives in conflict management and behavior management strategies also should be considered as these strategies are implemented.

If the steps described above are not successful, the appropriate use of measures such as study carrels, time-outs, or other restrictions in privileges could also be considered, so long as they are not inconsistent with a student's IEP. In addition, a disabled student may be suspended from school for up to ten school days. No prior determination of whether the misconduct was a manifestation of the student's disability is required before any of the above measures can be implemented. If the misconduct is such that more drastic measures would be called for, educators should review the student's current educational program and placement and consider whether a change in placement would be an appropriate measure to address the misconduct.

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Where educators believe that more drastic measures are called for, a disabled student may be removed from school for more than ten school days only if the following steps are taken. First, a group of persons knowledgeable about the student must determine whether the student's misconduct was a manifestation of his or her disability. If this group determines that the misconduct was not a manifestation of the student's disability, the student may be expelled or suspended from school for more than ten school days, provided applicable procedural safeguards are followed and educational services continue during the period of disciplinary removal.

However, if the group determines that the student's misconduct was a manifestation of his or her disability, the student may not be expelled or suspended from school for more than ten school days. Educators still can address the misconduct through appropriate instructional and/or related services, including conflict management and/or behavior management strategies, student and teacher training initiatives, measures such as study carrels, time-outs, or other restrictions in privileges, so long as they are not inconsistent with a student's IEP, and, as a last resort, through change of placement procedures in accordance with IDEA. Moreover, the school district has the option of seeking a court order at any time to remove the student from school or to change the student's placement if it believes that maintaining the student in the current educational placement is substantially likely to cause injury.

In addition, recent amendments to IDEA made by the Improving America's Schools Act permit educators to make immediate interim changes of placement for students with disabilities who bring firearms to school for up to 45 calendar days. If the student's parents request a due process hearing, the student must remain in the interim placement until the completion of all proceedings, unless the parents and school district can agree on another placement.

The questions and answers with this memorandum provide a description of the options outlined above in greater detail. We hope that this information will be helpful as we all strive to promote safe and effective schools. We urge you and your staff to review this information carefully and to disseminate it to interested individuals and organizations throughout your State. For easy reference a table of contents, setting forth all sixteen questions and their corresponding page numbers, immediately follows.

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Further questions can be directed to the Office of Special Education Programs by contacting Ms. Rhonda Weiss at (202) 205-8824 or Dr. JoLeta Reynolds at (202) 205-5507.

Attachment

cc: State Directors of Special Education
RSA Regional Commissioners
Regional Resource Centers
Federal Resource Center
Special Interest Groups
Parent Training Centers
Independent Living Centers
Protection and Advocacy Agencies

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**QUESTIONS AND ANSWERS
ON DISCIPLINING STUDENTS WITH DISABILITIES**

Question 1: Under IDEA, what steps should school districts take to address misconduct when it first appears?

ANSWER

School districts should take prompt steps to address misconduct when it first appears. Such steps could, in many instances, eliminate the need to take more drastic measures. These measures could be facilitated through the individualized education program (IEP) and placement processes required by IDEA. For example, when misconduct appears, determinations could be made as to whether the student's current program is appropriate and whether the student could benefit from the provision of more specialized instructional and/or related services, such as counseling and psychological services or social-work services in schools. In addition, training of the teacher in effective use of conflict management and/or behavior management strategies also could be extremely effective. In-service training for all personnel who work with the student, and when appropriate, other students, also can be essential in ensuring the successful implementation of the above interventions.

Question 2: Are there additional measures that educators may use in addressing misconduct of students with disabilities, and if so, under what circumstances may such measures be used?

ANSWER

The use of measures such as study carrels, time-outs, or other restrictions in privileges is permissible so long as such measures are not inconsistent with a student's IEP. While there is no requirement that such measures be specified in a student's IEP, IEP teams could determine that it would be appropriate to address their use in individual situations. Another possibility is an in-school change in a student's current educational program or placement, or even a removal of a student with a disability from school.

Where these changes are long-term (more than ten school days), they are considered a change in placement. IDEA requires that parents be given written notice before a change in placement can be implemented. (See question 7). However, where in-school discipline or short-term suspension (ten school days or less) is involved, this would not be considered a change in placement, and

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IDEA's parent-notification provisions would not apply. Also, there is no requirement for a prior determination of whether the student's misconduct was a manifestation of the student's disability. (See question 6).

Question 3: Is a series of short-term suspensions considered a change in placement?

ANSWER

A series of short-term suspensions in the same school year could constitute a change in placement. Factors such as the length of each suspension, the total amount of time that the student is excluded from school, the proximity of the suspensions to each other, should be considered in determining whether the student has been excluded from school to such an extent that there has been a change in placement. This determination must be made on a case-by-case basis.

Question 4: Are there specific actions that a school district is required to take during a suspension of ten school days or less?

ANSWER

There are no specific actions under Federal law that school districts are required to take during this time period. If the school district believes that further action to address the misconduct and prevent future misconduct is warranted, it is advisable to use the period of suspension for preparatory steps. For example, school officials may convene a meeting to initiate review of the student's current IEP to determine whether implementation of a behavior management plan would be appropriate. If long-term disciplinary measures are being considered, this time also could be used to convene an appropriate group to determine whether the misconduct was a manifestation of the student's disability.

If the student's IEP or placement needs to be revised, the school district should propose the modification. If the student's parents request a due process hearing on the proposal to change the student's IEP or placement, the school district may seek to persuade the parents to agree to an interim placement for the student while due process proceedings are pending. If the school district and parents cannot agree on an interim placement for the student while the due process hearing is pending, and 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 school district could seek a court order to remove the student from school. (See question 5).

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question 5: Under what circumstances may a school district seek to obtain a court order to remove a student with a disability from school or otherwise change the student's placement?

ANSWER

A school district may seek a court order at any time 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.¹ Prior to reaching the point where there is a need to seek a court order, a school district should make every effort to reduce the risk that the student will cause injury. Efforts to minimize the risk of injury should, if appropriate, include the training of teachers and other affected personnel, the use of behavior intervention strategies and the provision of appropriate special education and related services.² In a judicial proceeding to secure a court order, the burden is on the school district to demonstrate to the court that such a removal or change in placement should occur to avoid injury.

Question 6: What is the first step that school districts must take before considering whether a student with a disability may be expelled or suspended from school for more than ten school days?

ANSWER

The first step is for the school district to determine whether the student's misconduct was a manifestation of the student's disability. This determination must be made by a group of persons knowledgeable about the student, and may not be made unilaterally by one individual. See, 34 CFR §300.533(a)(3) (composition of the placement team); 34 CFR §300.344(a)(1)-(5) (participants on the IEP team). If the group determines that the

¹Honig v. Doe, 108 S.Ct. at 606.

²See Light v. Parkway C-2 Sch. Dist., 41 F.3d 1223 (8th Cir. 1994), where the Court of Appeals for the Eighth Circuit (Arkansas, Iowa, Missouri, Minnesota, Nebraska, North Dakota, and South Dakota), held that in addition to showing that a student is substantially likely to cause injury, the school district must show that it has made reasonable efforts to accommodate the student's disabilities so as to minimize the likelihood that the student will injure him or herself or others.

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student's misconduct was not a manifestation of his or her disability, the school district may expel or suspend the student from school for more than ten school days, subject to the conditions described below. If an appropriate group of persons determines that the student's misconduct was a manifestation of his or her disability, the student may not be expelled or suspended from school for more than ten school days for the misconduct. However, educators may use other procedures to address the student's misconduct, as described in question 10 below.

Question 7: If an appropriate group determines that a student's misconduct was not a manifestation of his or her disability, what is the next step that school districts must take before expelling or suspending the student from school for more than ten school days?

ANSWER

A long-term suspension or expulsion is a change in placement. Before any change in placement can be implemented, the school district must give the student's parents written notice a reasonable time before the proposed change in placement takes effect.³ This written notice to parents must include, among other matters, the determination that the student's misconduct was not a manifestation of the student's disability and the basis for that determination, and an explanation of applicable procedural safeguards, including the right of the student's parents to initiate an impartial due process hearing to challenge the manifestation determination and to seek administrative or judicial review of an adverse decision.

If the student's parents initiate an impartial due process hearing in connection with a proposed disciplinary exclusion or other change in placement, and the misconduct does not involve the bringing of a firearm to school (see question 11), the "pendency" provision of IDEA requires that the student must remain in his or her current educational placement until the completion of all proceedings.⁴ If the parents and school

³34 CFR §§300.504(a) and 300.505 (requirements for prior written notice to parents and content of notice).

⁴For a student not previously identified by the school district as a student potentially in need of special education, a parental request for evaluation or a request for a due process hearing or other appeal after a disciplinary suspension or expulsion has commenced does not obligate the school district to reinstitute the student's prior in-school status. This is

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district can agree on an interim placement, as is frequently the case, the student would be entitled to remain in that placement until the completion of all proceedings. During authorized review proceedings, school districts may use measures, in accordance with question 2 above, to address the misconduct.

Question 8: Under IDEA, where a student is suspended for more than ten school days or expelled for misconduct that was not a manifestation of his or her disability, does the school have any continuing obligations to the student?

ANSWER

Under IDEA, as a condition for receipt of funds, States must ensure that a free appropriate public education (FAPE) is made available to all eligible children with disabilities in mandated age ranges. Therefore, in order to meet the FAPE requirements of IDEA, educational services must continue for students with disabilities who are excluded for misconduct that was not a manifestation of their disability during periods of disciplinary removal that exceed ten school days. Thus, a State that receives IDEA funds must continue educational services for these students. However, IDEA does not specify the particular setting in which continued educational services must be provided to these students. During the period of disciplinary exclusion from school, each disabled student must continue to be offered a program of appropriate educational services that is individually designed to meet his or her unique learning needs. Such services may be provided in the home, in an alternative school, or in another setting.

because in accordance with the "stay-put" provision of IDEA, the student's "then current placement" is the out-of-school placement. After the disciplinary sanction is completed, if the resolution of the due process hearing is still pending, the student must be returned to school as would a nondisabled student in similar circumstances. It should be noted that, pending the resolution of the due process hearing or other appeal, a court could enjoin the suspension or expulsion and direct the school district to reinstate the student if the court determines that the school district knew or reasonably should have known that the student is a student in need of special education.

Page 12 - Chief State School Officers

Question 9: Under Section 504 and Title II of the ADA, where a student is expelled or suspended for more than ten school days for misconduct that was not a manifestation of his or her disability, does the school have any continuing obligations to the student?

ANSWER

Two related Federal laws, which are enforced by the Department's Office for Civil Rights (OCR), also contain requirements relating to disabled students in public elementary or secondary education programs. Section 504 of the Rehabilitation Act of 1973 (Section 504) prohibits discrimination on the basis of disability by recipients of Federal financial assistance, including IDEA funds. The Section 504 regulation at 34 CFR Part 104, §§104.33-104.36, contains free appropriate public education requirements that are similar to the IDEA FAPE requirements. The Americans with Disabilities Act of 1990 (ADA), Title II, extends Section 504's prohibition of discrimination on the basis of disability to all activities of State and local governments, whether or not they receive Federal funds. This includes all public school districts. The Department interprets the requirements of Title II of the ADA as consistent with those of Section 504. Throughout the remainder of this document, references to Section 504 also encompass Title II of the ADA.

As is the case under IDEA, under Section 504, students with identified disabilities may be expelled or suspended from school for more than ten school days only for misconduct that was not a manifestation of the student's disability. However, the Department has interpreted the nondiscrimination provisions of Section 504 to permit school districts to cease educational services during periods of disciplinary exclusion from school that exceed ten school days if nondisabled students in similar circumstances do not continue to receive educational services.

In implementing their student-discipline policies, school districts must comply with the requirements of IDEA and Section 504. Further questions about the application of the requirements of Section 504 and Title II of the ADA should be directed to your OCR regional office.

Page 13 - Chief State School Officers

Question 10: What options are available to school districts in addressing the misconduct of students with disabilities whose misconduct was a manifestation of his or her disability?

ANSWER

If a group of persons knowledgeable about the student determines that the student's misconduct was a manifestation of his or her disability, the student may not be expelled or suspended from school for more than ten school days. However, it is recommended that school officials review the student's current educational placement to determine whether the student is receiving appropriate instructional and related services in the current placement and whether conflict management and or behavior management strategies should be implemented for the student as well as for teachers and all personnel who work with the student, and for other students if appropriate. A change in placement, if determined appropriate, could be implemented subject to applicable procedural safeguards (see question 7). For example, the school district could propose to place the student in another class in the same school or in an alternative setting, in light of the student's particular learning needs.

The school district also would have the option of suspending the student from school for ten school days or less. The school district also has the option of seeking a court order at any time to remove the student from school or to change the student's placement if it believes that maintaining the student in the current placement is substantially likely to result in injury to the student or to others. (See question 5).

Question 11: Are there any special provisions of IDEA that are applicable to students with disabilities who bring firearms to school?

ANSWER

Recent amendments to IDEA made by the Improving America's Schools Act give school authorities additional flexibility in protecting the safety of other students when any student with a disability has brought a firearm¹ to a school under a local school district's jurisdiction. These amendments to IDEA took effect as of October 20, 1994.

¹This amendment to IDEA uses the term "weapon" and states that "weapon" means a firearm as such term is defined in section 921(a)(3) of Title 18, United States Code. The Gun-Free Schools Act also uses the term "weapon."

Page 14 - Chief State School Officers

Even before determining whether the behavior of bringing a firearm to school was a manifestation of the student's disability, the school district may place the student in an interim alternative educational setting, in accordance with State law, for up to 45 calendar days. The interim alternative educational setting must be decided by the participants on the student's IEP team described at 34 CFR §5300.344(a)(1)-(a)(5), which include the student's teacher, an agency representative who is qualified to provide or supervise the provision of special education, the student's parents, and the student, if appropriate. However, the student's placement cannot be changed until the IEP team has been convened and determined the interim alternative educational placement that the team believes would be appropriate for the student.⁶ If the parents disagree with the alternative educational placement or the placement that the school district proposes to follow the alternative placement and the parents initiate a due process hearing, then the student must remain in the alternative educational setting during authorized review proceedings, unless the parents and the school district can agree on another placement.

Question 12: Under the provision described in question 11 above, how long can a student be placed in an interim alternative educational setting?

ANSWER

A student with a disability who has brought a firearm to a school under a local school district's jurisdiction may be placed in an interim alternative educational setting, in accordance with State law, for up to 45 calendar days. However, if the student's parents initiate a due process hearing and if the parties cannot agree on another placement, the student must remain in that interim placement during authorized review proceedings. In this situation, the student could remain in the interim alternative educational setting for more than 45 calendar days.

⁶Under IDEA, a student with a disability who has brought a firearm to school may be removed from school or subjected to in-school discipline that removes the student from the current placement for ten school days or less. Therefore, before the student is placed in the interim alternative educational setting in accordance with the IEP team's decision, the school district has the option of removing the student from school, using other in-school discipline, or placing the student in an alternative setting for ten school days or less. (See questions 2 and 3).

Page 15 - Chief State School Officers

Question 13: Does the Gun-Free Schools Act apply to students with disabilities?

ANSWER

The Gun-Free Schools Act applies to students with disabilities. The Act must be implemented consistent with IDEA and Section 504. The Gun-Free Schools Act states, among other requirements, that each State receiving Federal funds under the Elementary and Secondary Education Act shall have in effect a State law requiring local educational agencies to expel from school for not less than one year a student who brings a firearm to school under the jurisdiction of local educational agencies in that State, except that the State law must allow the local educational agency's chief administering officer to modify the expulsion requirement for a student on a case-by-case basis. The Gun-Free Schools Act explicitly states that the Act must be construed in a manner consistent with the IDEA.

Question 14: How can school districts implement policies under the Gun-Free Schools Act in a manner that is consistent with the requirements of IDEA and Section 504?

ANSWER

Compliance with the Gun-Free Schools Act can be achieved consistent with the requirements that apply to students with disabilities as long as discipline of such students is determined on a case-by-case basis in accordance with IDEA and Section 504. Under the provision that permits modification of the expulsion requirement on a case-by-case basis, the requirements of IDEA and Section 504 can be met. IDEA and Section 504 require a determination by a group of persons knowledgeable about the student on whether the bringing of the firearm to school was a manifestation of the student's disability. Under IDEA and Section 504, a student with a disability may be expelled only if this group of persons determines that the bringing of a firearm to school was not a manifestation of the student's disability, and after applicable procedural safeguards have been followed.

For students with disabilities eligible under IDEA who are expelled in accordance with these conditions, educational services must continue during the expulsion period. The Gun-Free Schools Act also states that nothing in that Act shall be construed to prevent a State from allowing a school district that has expelled a student from such a student's regular school setting from providing educational services to that student in an alternative educational setting. For students with disabilities who are not eligible for services under IDEA, but who are covered by Section 504 and are expelled in accordance with the above

Page 16 - Chief State School Officers

conditions, educational services may be discontinued during the expulsion period if nondisabled students in similar circumstances do not receive continued educational services.

Question 15: Does the authority of the school district's chief administering officer, under the Gun-Free Schools Act, to modify the expulsion requirement on a case-by-case basis mean that the decision regarding whether the student's bringing a firearm to school was a manifestation of the student's disability and placement decisions can be made by the chief administering officer?

ANSWER

No. As discussed above, all of the procedural safeguards and other protections of IDEA and Section 504 must be followed. Once it is determined by an appropriate group of persons that the student's bringing a firearm to school was not a manifestation of the student's disability, the school district's chief administering officer may exercise his or her decision-making authority under the Gun-Free Schools Act in the same manner as with nondisabled students in similar circumstances. However, for students with disabilities who are eligible under IDEA and who are subject to the expulsion provision of the Gun-Free Schools Act, educational services must continue during the expulsion period. By contrast, if it is determined that the student's behavior of bringing a firearm to school was a manifestation of the student's disability, the chief administering officer must exercise his or her authority under the Gun-Free Schools Act to determine that the student may not be expelled for the behavior. However, there are immediate steps that may be taken, including removal. (See question 16).

Question 16: What immediate steps can school districts take to remove a student with a disability who brings a firearm to school?

ANSWER

A student with a disability who brings a firearm to school may be removed from school for ten school days or less, and placed in an interim alternative educational setting for up to 45 calendar days. (See questions 2 and 11). However, if the parents initiate due process, the student must remain in the interim alternative placement during authorized review proceedings, unless the parents and school district can agree on a different placement. (See questions 11 and 12). In addition, school districts may initiate change in placement procedures for such a

Page 17 - Chief State School Officers

student, subject to the parents' right to due process. A school district also could seek a court order if the school district believes that the student's continued presence in the classroom is substantially likely to result in injury to the student or to others. (See question 5).

**STUDENT WITH DISABILITIES
ENGAGES IN BEHAVIOR SUBJECT TO DISCIPLINE
(BUT DOES NOT BRING A FIREARM TO SCHOOL)**

SUSPEND THE STUDENT FOR UP TO TEN SCHOOL DAYS
(SEE QUESTIONS 2 & 4)

CONDUCT MANIFESTATION DETERMINATION
(SEE QUESTION 6)

IF STUDENT'S CONDUCT IS A
MANIFESTATION OF DISABILITY,
SCHOOL MAY INITIATE A CHANGE IN
PLACEMENT BUT MAY NOT EXPEL OR
SUSPEND LONG-TERM
(SEE QUESTION 10)

IF STUDENT'S CONDUCT NOT
MANIFESTATION OF DISABILITY, (SEE
QUESTIONS 6-7), MAY EXPEL OR
SUSPEND LONG-TERM, BUT MUST
PROVIDE CONTINUED SERVICES
(SEE QUESTIONS 7-9)

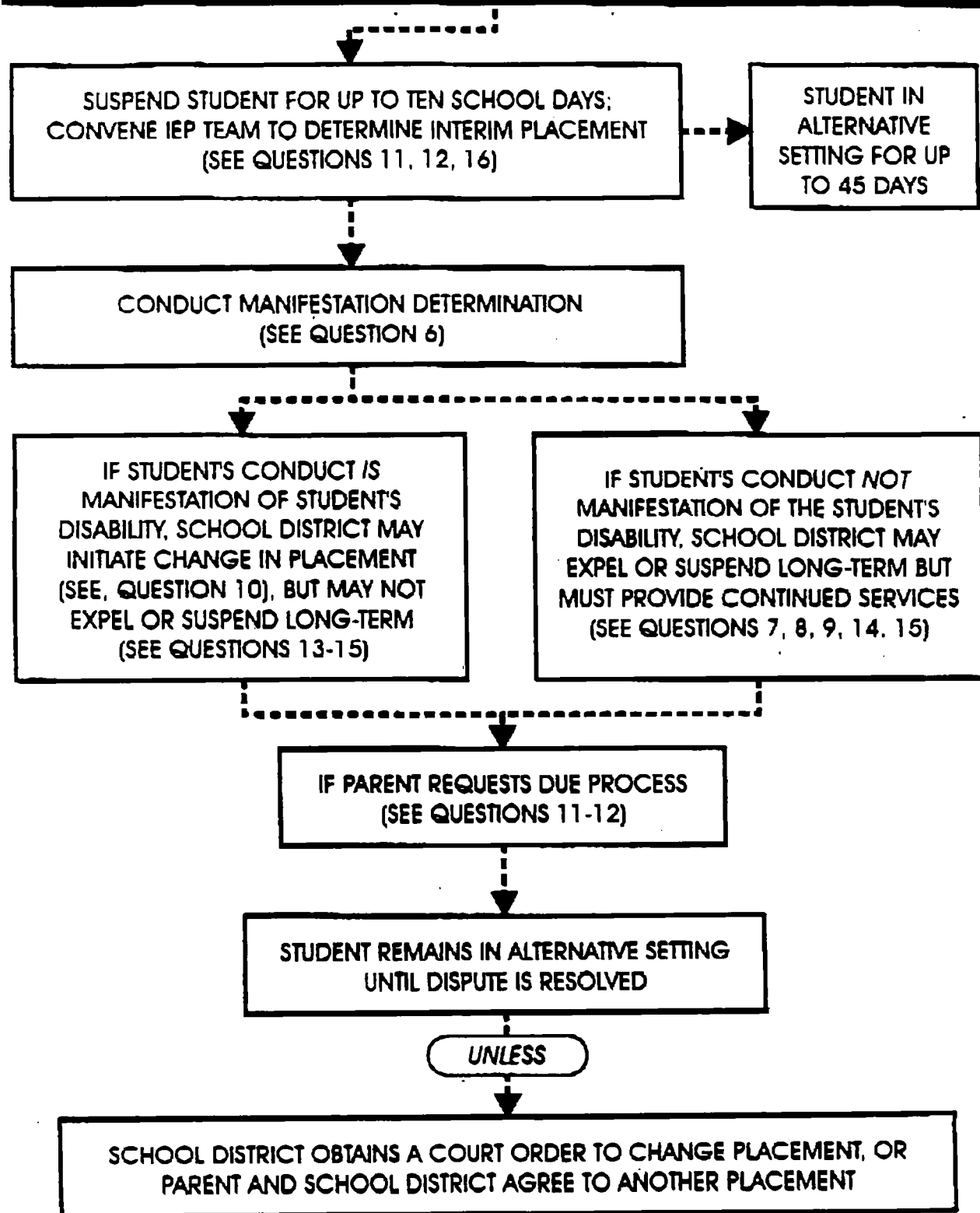
IF PARENT REQUESTS DUE PROCESS
(SEE QUESTIONS 5-7)

STUDENT REMAINS IN CURRENT PLACEMENT UNTIL DISPUTE IS RESOLVED

UNLESS

SCHOOL DISTRICT OBTAINS A COURT ORDER TO
CHANGE PLACEMENT, OR PARENT AND SCHOOL
DISTRICT AGREE TO ANOTHER PLACEMENT

STUDENT WITH DISABILITIES BRINGS A FIREARM TO SCHOOL



Withdrawal/Redaction Marker

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
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001. note	Handwritten note; RE: Personally Identifiable Information [partial] (1 page)	00/00/0000	b(6)
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COLLECTION:

Clinton Presidential Records
Domestic Policy Council
Diana Fortuna
OA/Box Number: 12025

FOLDER TITLE:

Discipline - IDEA [Individuals with Disabilities Education Act]

2007-0143-F
db4498

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

> mtg: find Rahm

Black Point Inn

PROUTS NECK, MAINE 04074

~~Haskins~~
Mugma-1A
mtg-Tues
H48
6-620

Cessation -
CR a probl.
Zero tol.

Frank - COS → in a.m.
(Rahm)

to JH - Policy VP-Elaine??

(b)(6)

[001]

Bourdelle

Bill report - end of day

addings - Educ prepared to OK
state law defined
letter: 710 w/ parents
or hq office

Guns: investigation over

TELEPHONE (207) 883-4126

add weapons

Frank H.

	<u>Current Law</u>	<u>Our Proposal</u>	<u>Senate</u>	<u>House</u>
--	--------------------	---------------------	---------------	--------------

cessation	No	No	Weapons + drugs (if not manifest)	Same as Senate + state definition Cess bad but 2 ces
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Stay - put	Guns ≤ 45 days (Jeffords amdt)	Guns + weapons Htg officer if dangerous Disruptive (w/ protections)	Same as Senate?	Add drugs
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Now Edge will add drugs

roads +
rims

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

11-Apr-1996 03:42pm

TO: Diana M. Fortuna

FROM: Jeremy D. Benami
 Domestic Policy Council

SUBJECT: good memo

I wish I had a clearer grasp of what separates good writing from not so good. Your memos are so clear and orderly, but I couldn't begin to explain to someone whose writing is confusing what to do to write more like you and less like them.

Thanks for the cc.

N T
N T

E X E C U T I V E O F F I C E O F T H E P R E S I D E
E X E C U T I V E O F F I C E O F T H E P R E S I D E

11-Apr-1996 01:37pm

TO: Elizabeth E. Drye

FROM: Diana M. Fortuna
 Domestic Policy Council

CC: Jeremy D. Benami
CC: Gaynor R. McCown

SUBJECT: I know you're interested in this issue...

Here is a copy of my draft memo for Carol on special ed/discipline. I showed it to her earlier today, and she said it was OK, and that she is going to add a bit on where she comes down on this issue policy-wise. She said she would say something about how she doesn't entirely agree with the advocates here, but that it looks like we (the federal government) are moving in a sensible and moderate direction on this.

April 11, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol H. Rasco

SUBJECT: Expelling Students with Disabilities

You asked about the attached item from Cabinet Affairs' weekly report. Virginia is suing the Department of Education over its position that states may not expel children with disabilities without offering them alternative instruction outside of the classroom. You asked whether this is a double standard, and whether it is bad policy.

Special education is governed by the Individuals with Disabilities Education Act (IDEA), a 20-year-old civil rights law. Legally, there appears to be a strong consensus that the IDEA requires that children with disabilities be educated and therefore prohibits "cessation of services." Since there is no such Federal protection for students without disabilities, there is in a sense a double standard in those states that allow cessation for non-disabled students (roughly 30 states).

Disability advocates argue that history justifies this distinction, since schools have used discipline as an excuse to

remove disabled students from class, and that proposals to treat disabled students "equally" are flawed because some disabilities manifest themselves as behavioral problems. School boards, principals, and the teachers' unions feel that the double standard encourages irresponsible behavior and endangers non-disabled children. (Unfortunately, there are few statistics about how prevalent such discipline problems are.)

This question is now being debated from a policy perspective on the Hill, since IDEA is up for reauthorization. Discipline is the most controversial issue. The pressure for change centers less on cessation of services than it does on the question of when a school can act unilaterally to remove a student from the classroom on a temporary basis. In fact, a coalition of school boards, principals, administrators, the NEA, and the AFT split last year over the school boards' insistence that they push for cessation of services. The other groups did not want to take on that issue, choosing instead to focus on the latter issue.

The Department of Education opposes cessation of services. Its IDEA reauthorization proposal would allow schools to act unilaterally to remove from the classroom students who bring weapons to school (current law allows this for guns only). It would also allow a hearing officer to remove a child who exhibits "dangerous" behavior.

The key leaders on this issue in both the Senate and the House are sympathetic to the disability community's perspective, and are attempting to proceed in a bipartisan way. They are trying to satisfy individual members who might be inclined to offer more extreme amendments so that this does not blow up into a very public issue.

The Senate Labor and Human Resources Committee has passed a bill that would allow schools to cease services for students who bring drugs or weapons to school. It would also allow a hearing officer to remove a student from the classroom for "disruptive" behavior, a lesser standard than "dangerous".

Senators Frist and Harkin, the key Senate leaders on this issue, did not want to go as far as they did. However, they reached a compromise with the school boards, principals, unions, and disability advocates, with none of the groups enthusiastic about it. The Department of Education has concerns about defining terms like "disruptive". The House is likely to adopt the Senate position on cessation, but may take a stand closer to that of disability advocates and the Department on other issues.

This is a thorny issue that raises the question of whether twenty years of inclusion of children with disabilities has brought us to the point where students with and without disabilities can be disciplined "equally". Moderate change appears inevitable here, but there does not appear to be widespread political support for the state of Virginia's policy, which goes beyond the Senate plan to cease services only for students who bring drugs or weapons to school.

It is interesting to note that the Department of Education tells us privately they oppose cessation of services for any student, even the non-disabled, but the only area where they have influence is in special education.

cc: Leon Panetta
John Hilley?
Kitty Higgins?

DRAFT

April 11, 1996

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cc: Leon Panetta
John Hilley?
Kitty Higgins?

trying to ~~control~~ satisfy indiv members who might be inclined
to offer more extreme amendments } in an effort to avoid making
this more of a public issue / having this blow up
into a very public issue

07/19/95 09:17

E

*** EXPEDITE

0002/006

**American Association of School Administrators
American Federation of Teachers
National Association of Elementary School Principals
National Association of Secondary School Principals
National Education Association
National School Boards Association**

July 19, 1995

FOR RELEASE: Immediately**CONTACT: Gary Marx (AASA)**
(703)528-8700**Janet Bass (AFT)**
(202)879-4334**June Milman (NAESP)**
(703)684-3345**Bob Mahaffey (NAESP)**
(703)680-0200**Kathleen Lyons (NEA)**
(202)833-4000**Jay Butler (NSBA)**
(703)838-6722

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages ▶ 6

To <i>Diana Fortuna</i>	From <i>Theda Falecia</i>
Dept./Agency <i>DPC</i>	Phone # <i>205-8148</i>
Fax # <i>456-7028</i>	Fax # <i>205-9252</i>
NSN 7540-01-317-7368	5099-101 GENERAL SERVICES ADMINISTRATION

Last page: more on research

**SIX NATIONAL EDUCATION GROUPS EXPRESS CONCERN
OVER IDEA REAUTHORIZATION PROPOSALS**

Six national education organizations representing teachers, principals, administrators and school boards are releasing a joint statement outlining shared recommendations for the reauthorization of IDEA, the Individuals with Disabilities Education Act.

The six groups stated the Education Department's reauthorization proposal does not adequately address concerns raised by school violence, the enormous cost of special education and related services, and greater inclusion of disabled students into general classrooms.

"Therefore, we urge the Congress to balance more carefully the needs of students with disabilities with the needs of all students," the groups said in the statement.

Attached is a copy of the document being sent to every member of Congress. It is signed by: American Association of School Administrators, American Federation of Teachers, National Association of Elementary School Principals, National Association of Secondary School Principals, National Education Association and National School Boards Association.

07/19/95 09:17 8

EXPEDITE

0003/008

**American Association of School Administrators
American Federation of Teachers
National Association of Elementary School Principals
National Association of Secondary School Principals
National Education Association
National School Boards Association**

July 17, 1995

Dear Member of Congress:

The American Association of School Administrators (AASA), the American Federation of Teachers (AFT), the National Association of Elementary School Principals (NAESP), the National Association of Secondary School Principals (NASSP), the National Education Association (NEA), and the National School Boards Association (NSBA) have become increasingly concerned about the policy environment surrounding the reauthorization of the Individuals with Disabilities Education Act (IDEA).

Because of school violence, the enormous costs of special education and related services, and greater inclusion, federal special education law is having a greater impact on the rights and needs of non-disabled students. The Department of Education's reauthorization proposal unfortunately does not adequately address our concerns. Therefore, we urge the Congress to balance more carefully the needs of students with disabilities with the needs of all students. We have common concerns on seven issues of significance in the proposed reauthorization. These issues include:

- school safety and discipline
- placements based on students' individual needs
- attorneys' fees
- health-related services
- federal funding and new entitlements
- decategorization
- rule making through policy letters

The attached document explains these concerns in greater depth. We urge you to consider our concerns and support our recommendations.

Sincerely,

American Association of School Administrators
American Federation of Teachers
National Association of Elementary School Principals
National Association of Secondary School Principals
National Education Association
National School Boards Association

Cont - educ: litany includes IDEA - just introd'd Senate

DF: conge - some say
prop has list'd - tech part of team; new fed req
more approx inst tech
in general, correct;

spt prop submit

recog'd to appr tr +
appr spt in C

ability to work w/c is core

Bill pt of ed ref agenda

enough approx plant
in classroom

but spts provided
Part of ed
~~also~~ socialization

Mentioning
strong fam +
educ backb of D. children

07/19/95 09:18

EXPEDITE

004/006

Recommendations for the Reauthorization of IDEA supported by AASA, AFT, NAESP, NASSP, NEA, and NSBA

SCHOOL SAFETY AND DISCIPLINE

Recommendation — IDEA should not prohibit local school officials from acting on their own authority to remove dangerous students with disabilities from classrooms and then place them in alternative educational settings until a more appropriate placement is determined. In addition, school officials should be permitted to place disruptive disabled students in a temporary alternative education setting when the disruption is so persistent and severe that it has a serious negative impact on the education of the other students.

unilateral removal of
dangerous + disruptive

Rationale — Federal law should not prohibit school authorities from treating all students equally who engage in violent or highly disruptive actions. High standards should be required of all students and this should include responsible behavior standards for students with disabilities. Intended to protect access to school, some of the restrictions on the discipline of disabled students set a double standard that encourages disruptive and dangerous behavior and acts as a disincentive for holding these students fully accountable for their behavior. Worse still current law does not adequately take into account the rights of school personnel and other students both to work and learn without fear of violence.

PLACEMENTS BASED ON STUDENTS' INDIVIDUAL NEEDS

Recommendation — The regulatory language on the continuum of alternative placements should be incorporated into the statute. Likewise a 90-day evaluation period should be allowed when initial placements or changes in placements of disabled students are made. At the end of the period, the placement would be evaluated and stay-put procedures would apply. Teachers must play an important role in this process.

continuum in legislation
90-day trial placement

Rationale — Reference to the "continuum of placements" is explicit in the IDEA federal regulations, but not in the legislation. The continuum of placements permits the assignment of special education students to the most appropriate educational setting, including the general classroom-based on individual needs. The rights of disabled and non-disabled students to receive a high-quality education will be served by placing the continuum of placements in the law. In addition, a 90-day evaluation period would allow all parties to observe

07/19/95 09:19

XPEDITE

005/008

whether a new classroom is appropriate without having the student locked into the placement.

ATTORNEYS' FEES

*Parity of disclosure
indication of intent to
place in private school
conditions on awarding
attorney's fees*

Recommendation — States should be required to offer mediation, and mediation should be required of all parents before they can collect attorneys' fees. In addition, parents' attorneys should not be allowed to withhold from school district officials relevant information about the student's disability. Likewise, parents must inform school officials of their intention to seek reimbursement for expensive private school tuition before the student is withdrawn from public school. Finally, IDEA should be made consistent with other fee shifting statutes; fees should not be awardable except where a lawsuit is necessary to resolve the dispute.

Rationale — The dispute resolution system currently required by federal law needlessly consumes taxpayer resources and delays the resolution of disputes over educational services. Greater reliance on mediation can help to reduce the reliance on costly administrative hearings, while lowering the temperature and costs of resolving disputes. These and our other recommendations will help insure that school officials will not be forced to provide services of dubious educational value simply because it is more economical than incurring the costs of litigation.

HEALTH-RELATED SERVICES

Recommendation — IDEA should encourage states to designate a public health agency to bear the primary financial responsibility for furnishing physical and mental health services provided under IDEA. Schools and these health agencies would then be responsible for coordinating these services effectively.

Rationale — IDEA requires school districts to pay for many health-related services such as catheterization, psychological services, mental health services and personal items such as hearing aids. The cost of these health-related services has dramatically increased, with the result that limited general education funds can be diverted to meet them, and schools are being asked to provide some services they should not be expected to provide. By requiring a fairer distribution of these services among public agencies, the educational and health needs of students can be met more effectively.

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FEDERAL FUNDING AND NEW ENTITLEMENTS

Recommendation — The Congress must set targets for moving aggressively toward meeting its commitment to fund 40% of the costs of special education. Until adequate federal funding is provided the costs of any new requirements IDEA imposes on local schools must contain a careful cost analysis. No new entitlements should be established unless the federal government fully funds their costs.

Rationale — Since the passage of 94-142 the federal government has expanded the requirements of IDEA in some cases beyond what schools can reasonably be expected to provide. However, the Center for Special Education Finance reports that the federal government's contribution to the costs of special education has declined from a high of 12.5% in 1979 to 8.2% in 1993. No new cost requirements should be imposed until the federal government provides additional financial assistance to school districts.

DECATEGORIZATION

Recommendation — Preserve the current definitions of disability in IDEA.

Rationale — The Department of Education has recommended that the reauthorized IDEA reflect the language of Section 504 when it discusses eligibility criteria for services to students. However, the language of Section 504 is so ambiguous that districts are plagued with multiplying paperwork and confusion. Legal experts predict that decategorization of IDEA eligibility will result in increasing litigation, thus producing additional legal, personnel, and other expenses for already strapped school districts. In addition, using this model, Vermont is experiencing spiraling special education costs.

RULE MAKING THROUGH POLICY LETTERS

Recommendation — Policy letters from the Office of Special Education (OSEP) should not contain changes that require new expenditures or changes in state or local procedures. Such changes must only be promulgated through the normal rule-making process, and policy letters must only be advisory. New mandates that have been imposed through policy letters should also be reviewed to determine if they have adequate statutory basis.

Rationale — On a number of occasions, OSEP has issued policy letters without adequate statutory justification that significantly increase the financial and/or procedural responsibilities that states and districts must meet to remain in compliance with IDEA. These letters are not adequately disseminated, yet they can become the basis for Department of Education enforcement actions.

E D U C A T I O N

Tales Out of School

Fueled mostly by anecdotal evidence, a battle is raging in Congress over proposed revisions of a two-decades-old program to guarantee educational opportunity for disabled youngsters.

BY ROCHELLE L. STANFIELD

Picture a disabled student in public school: Do you see a sweet little 9-year-old girl in her diminutive wheelchair who just wants to attend regular classes with her friends? Or do you visualize a hulking, emotionally disturbed 17-year-old terrorizing his high school with a knife?

Do you think of a blind student who merely needs lessons in Braille to prepare for college and a profession? A mentally retarded child who requires a lot of extra help from a harried teacher with too many other students? Or a disruptive kid who sings and drums on the desk and runs around the classroom for no reason at all?

Is the picture one of your son, niece, student or client? Or of a poster child, a news photo of protesters in wheelchairs, Forrest Gump or Peter in the award-winning 1992 television documentary *Educating Peter*?

These contrasting images dominate the discussion as Congress reexamines the federal law on educating disabled children for the first time since the statute was passed in 1975. The picture that prevails is likely to determine the kind and quality of schooling provided in the future for these students, who make up 11 per cent of the public school population.

Overhaul of the Individuals With Disabilities Education Act—parts of which expire on Sept. 30—is tailor-made for policy decision by anecdote. The facts and figures are sparse and conflicting; the horror stories are stark and vivid. And the interest groups are well organized, disciplined and loaded with heart-tuggers or spine-chillers, depending on their legislative goal.

In the past, organizations representing the disabled could count on their substantial political clout in Congress. "Politicians are terrified of them—that they'll trot out people in wheelchairs," a lobbyist for an education organization said enviously. "It's very easy for a Member to feel virtuous by voting for their issues."

But times have changed on Capitol

Hill and so has the portrayal of the disabled. To many in Congress these days, the disabled are just another undeserving interest group with outstretched hands.

"It is a real visceral issue," a congressional aide acknowledged. Surprisingly, the tradition of bipartisanship on this issue so far has held fast in both congressional chambers. Whether that spirit will continue as the measure gets out of committee and onto the House and Senate floors this fall, however, is an open question.

The law spells out rules to be followed by states and local school districts in delivering "special education" to the nation's five million disabled students. To help pay for the extra cost of schooling these children, the program set up by the law now provides \$2.3 billion a year, the second-largest federal grant for elementary and secondary schools after the \$6.7 billion a year for compensatory education of poor youngsters.

Money is the real root of the dispute. It now costs, on average, double the normal amount to educate a disabled child; and exemplary special-education programs require several times the regular per pupil expenditures. Federal aid provides only 7 per cent of the extra cost.

But financial considerations are coated with a thick layer of fear and distrust on the part of everyone associated with the issue.

The debate has come to a head over what sounds like a minor detail: how schools discipline misbehaving disabled students. But the issue of discipline is the concrete manifestation of a volatile combination of inadequate funds and the disparate fears of the opponents.

The law forbids schools from expelling disabled students and permits suspension for only 10 days. Under a provision adopted last year, a special-education student who brings a gun to school may be removed from that school but must be placed in an alternative school that offers specialized services for the disabled. For any other offense, disabled students must be allowed to stay in their original school unless parents and the school officials

agree on an alternative assignment—or a court makes the decision.

Advocacy groups for the disabled—which disagree on a lot of other things—insist on that provision because they fear that the schools will use broadened disciplinary powers to get rid of students who are difficult or expensive to educate.

"Nobody wants kids with guns and knives in school," said Justine Maloney, legislative affairs chairwoman of the Learning Disabilities Association of America, a national network of concerned parents. But designating students as dangerous or disruptive "has been used in the past so many times to expel kids with disabilities, particularly kids with learning disabilities," she added.

In addition, parents maintain, much of the bad behavior of disabled students is the fault of the schools and teachers who don't know how to deal with them.

Regular school educators have a diametrically opposite view. Prohibiting the expulsion of disabled students in contradiction of school district policies requiring it for nondisabled students, they contend, reinforces bad behavior in disabled students, creates an unfair division between regular and special-education students and reduces the school atmosphere to unruly, unsafe chaos.

The movement in recent years to place as many disabled students as possible in regular schools has only exacerbated the problem, to their way of thinking. "It has, we believe, resulted in a growth and expansion of discipline problems that are caused by a dual standard," said Beth Bader, assistant director of the educational issues department at the American Federation of Teachers (AFT).

Teachers fear the placement of troubled, disabled students in their classes because most teachers have neither the training themselves nor the experienced aides and specialists to help them cope with such children. (It's estimated that nearly 70 per cent of disabled students suffer from emotional problems, mental retardation or other learning disabilities.)

School boards and administrators fear that if they try to discipline disabled students, the parents will take them to court.

The law enables parents who win in such cases to be reimbursed for their attorneys' fees by the school district. School officials say that is a big deterrent to them.

So a lion-and-lamb coalition of teachers, principals, school boards and superintendents who rarely agree on educational issues is demanding much greater discretion in dealing with disabled students. The Education Department has proposed a compromise that satisfies neither side but may just be the option Congress adopts.



United Cerebral Palsy Association's national director John D. Kemp
He says disabled students' rights must be weighed against program costs.

A lot of other issues that feed into the debate over special education also pose cost questions and provoke fear and mistrust: disagreements over the best setting in which to educate disabled children, teacher training and who pays for it and congressional micromanagement of a state and local function.

"I start to hear messages about, 'we're just a burden' and 'his is just too costly,' and I really get worried," said John D. Kemp, national director of the United Cerebral Palsy Association in Washington, who is a quadriplegic from birth. "We think that just purely basing arguments on cost effectiveness is ignoring the constitutional arguments of our rights to be full citizens in this country."

CLAIMING THE HIGH GROUND

In the battle over federal rules on discipline in special education, each side climbs all over the other to claim the high

moral ground. Advocates for the disabled insist that they are the guardians of civil rights of the most vulnerable students. Educators respond that they are protecting the safety and learning environment of all students.

"The discipline issue, unlike any other issue in special ed, involves other children," said Michael A. Resnick, associate executive director of the National School Boards Association. "What the public is going to see and react to is these [disabled] kids coming to school and putting other kids in danger or terrorizing the classroom."

"Rhetoric like that concerns me because it is so out of proportion to the reality," said Jamie Ruppman, a specialist on autism who has consulted for both parents and school systems in Virginia. "We have very few of these mythical youngsters."

"You know, if we removed every one of our five million [disabled] children from the public schools of America, you would still be sitting here talking about discipline and disruption," she continued. "The problem isn't our kids and you know it isn't."

The debate has come full circle in the past two decades. Congress initially intruded the federal government into the special-education issue

in 1975 because it determined that state and local authorities were ducking responsibility. Federal lawmakers found "that the arbitrary use of discipline by school officials was the major strategy used to exclude, segregate and deny services to disabled children," recalled Sen. Tom Harkin of Iowa, ranking Democrat on the Senate Labor and Human Resources Subcommittee on Disability Policy, at a hearing on discipline in July.

But this time around, a move is afoot in Congress to give power back to local school officials to exclude disabled students under certain circumstances. And, as the debate unfolds, each side is relying heavily on anecdotes to make its point.

E. Don Brown, a high school principal from Hurst, Texas, for example, told one horror story after another in testimony on behalf of the National Association of Secondary School Principals: the emotionally and behaviorally disturbed 17-year-old who assaulted a fellow student with a

starter pistol; the youngster who hit a staff member in the head with a rock; the 14-year-old who threatened to kill a teacher.

Brown's testimony contained no statistics detailing the frequency of such incidents or the proportion of disabled youngsters who get into trouble. That's probably because there are no reliable studies to back up the contentions of either side. "If they had [a lot of cases of violence], they would collect data on it," said Kathleen B. Boundy, co-director of the Center for Law and Education in Boston, a legal advocate for the disabled. "My feeling is the instances are pretty rare."

But when such incidents occur, they tend to make a big splash in the local media and cause an uproar among parents of nondisabled students that resonates on Capitol Hill. The reverberations have been bipartisan.

The latest furor began last year when Congress was voting to extend the special-education law for a year. Sen. Slade Gorton, R-Wash., proposed an amendment to increase from 10 days to 90 days the period that school officials can remove disabled students who bring weapons to school or who exhibit dangerous behavior. The Senate accepted the amendment by a 60-40 vote.

Then, Sen. James M. Jeffords, R-Vt., offered another amendment to tone down the Gorton provision by limiting its applicability to students with guns and the temporary removal to 45 days. The Senate passed the amendment unanimously and it became part of the law.

Now Gorton wants to revive his proposal and expand it to enable school officials to remove disabled students who are merely disruptive. The coalition of education organizations supports him. "Disruptive behavior is as injurious to the educational program of kids as dangerous behavior is to their safety," the AFT's Bader said.

The Education Department has come up with a compromise. It proposes expanding the Jeffords provision to cover not only students with guns, but also those with knives and other weapons. Instead of having to go to court to remove a student against the parents' wishes, school officials could take the case to an administrative hearing officer.

"I believe the policy we have advanced is a solid policy that will allow children to learn in a safe environment and will not allow disabled children to be discriminated against," Judith E. Heumann, assistant Education secretary for special education and rehabilitative services, said in an interview.

Confined to a wheelchair herself, Heumann is an outspoken advocate for the

disabled. "I believe very strongly that the job of elected representatives and the job of people like myself is to assure that no children in this country are denied appropriate opportunity because of bias," she continued.

Nonetheless, interest groups for the disabled adamantly oppose the Education Department's approach because they believe it weakens the special-education law. If a child is really dangerous, most parents would agree to an alternative placement, they argue. If the parents don't, a judge will. Stronger disciplinary

Facts and figures are sparse and conflicting horror stories plentiful in debate over education of disabled children.

provisions would just let teachers off the hook without solving discipline problems.

Bonnie Fell, a Skokie, Ill., mother of four disabled children, used the experience of her son Dan to make this point at the Senate hearing in July. The boy, who suffers from learning and behavioral disabilities, couldn't sit still in class and would fight with his classmates. So, for years, the school would simply suspend him—reinforcing his bad behavior. Dan "quickly realized that if he wanted to go home, all he would have to do is misbehave and Mom would come get him," she said.

The summer before fourth grade, Dan was sent to summer school. Instead of going to class, he and some friends would go around vandalizing property. "My husband and I felt overwhelmed with the thought of having a 9-year-old juvenile delinquent as a son," Fell said.

But the story has a happy ending. The Fells transferred Dan to another school district that had a good special-education program for disabled children. Now 16 years old, Dan makes the honor roll, has been nominated for the Congressional Youth Leadership Council and represented Illinois at a national wrestling tournament.

In opening that hearing, Sen. Bill Frist, R-Tenn., the subcommittee chairman, asked whether the current policy on discipline is understood and followed. If so, he

asked, does it work? And if not, how should it be strengthened? "These are important questions, reasonable questions," he went on. "I do not believe that we need to abridge civil rights to get answers."

THE BOTTOM LINE

Just as finances figure prominently in the question of maintaining discipline, the subject of money lurks behind practically every issue in the debate over educating disabled children.

"A lot of it does come down to money," Resnick of the school boards association said. "School districts have a finite amount of money to provide education for 44 million children, of whom only 5 million participate in special education."

"We are committed to providing services to children and guaranteeing their rights," he continued. "But we want to do it under assumptions that wouldn't cost as much money."

Ever since the law was passed in 1975, state and local officials have pointed to special education as an unfunded—or, more accurately, "underfunded"—federal mandate. (The statute permits Congress to pay as much as 40 per cent of the excess cost of educating special students, but it has never anted up more than 12.5 per cent.) Advocates for the disabled, not surprisingly, dispute that contention. "The law was based on class action lawsuits," explained Christopher Button, director of governmental activities for the United Cerebral Palsy Association. "This is really an equal protection issue, and the states would have to do it anyway. The federal government was saying, essentially: We're going to help you do this thing that you are responsible for doing."

As they do in their other arguments over special education, the various sides employ anecdotes rather than statistics in their debate over dollars, probably because here, too, the data are elusive. Resnick figured school systems spend an extra \$30 billion a year on disabled students, but conceded that this was just a guess.

Last year, the New York City school system said that it spent an average of \$5,000 per regular student and \$23,700 for each disabled student in a special all-day program. It didn't calculate the extra costs associated with teaching a disabled child in a regular classroom. That kind of placement—a variation on the practice of mainstreaming—is the most controversial. One child with cerebral palsy, Alba Somoza, received extensive home and school services to enable her to participate in a regular class. Her education cost the city \$100,000 a year. The Somoza case

became a media sensation in the Big Apple but shed very little light on the true scope of the problem.

Whether to assign a disabled child to a regular classroom is an emotional as well as financial issue, and one on which neither the organizations that represent the disabled nor those that represent the educators agree, even among themselves.

The law requires school districts to educate disabled students with nondisabled students to the maximum extent "appropriate." The trick, of course, is defining appropriate. That is supposed to happen on a case-by-case basis.

When a child is determined to need special-education services, school officials, specialists and parents get together to design an "individualized education program," spelling out what the child can be expected to learn and the most appropriate setting to achieve that learning. The setting can be a special school; a self-contained special classroom within a regular school; a regular classroom; or a regular classroom with time spent in something called a "resource room"—a room staffed by a special-education teacher who provides individualized help, whether for reading or math or behavior.

The Education Department estimates that 36 per cent of special-education students spend most of their day in a regular classroom and 24 per cent in a special classroom. Most of the rest divide their day between the regular classroom and the resource room.

When the law was passed originally, the highest priority was simply to provide an education for disabled children. An estimated one million disabled children attended no school at all in the early 1970s. The law has solved that problem. Now many advocates for the disabled want to increase regular-classroom attendance for disabled children.

"As a disabled child, I was excluded from the educational system," assistant secretary Heumann said. "So I personally very clearly understand that you can be put in an educational environment where you can be learning academically but are not learning socially."

Heumann grew up in New York City.

Because she was in a wheelchair, she wasn't allowed to attend school at all until fourth grade in 1956. Then she attended special classes for the disabled in the basement of a regular school an hour and a half away from home. The only contact she and her disabled classmates had with the other children in the school was when the nondisabled children were permitted to push the wheelchairs from the bus into school and help the disabled children off with their coats.

"I know very clearly what that meant to me and to the other disabled children,"



Assistant secretary of Education Judith E. Heumann
Excluded students "can be learning academically," but not socially.

Heumann recalled recently. "We felt inferior and they felt everywhere from superior to charitable, but they didn't feel that we were their peers."

No more than 30 per cent of children in special education are physically disabled, but assigning them to a regular classroom can be very expensive because they may require special equipment or the classroom itself may have to be physically modified. Once these students are accommodated, however, they often can learn right alongside their peers.

The story is very different for the overwhelming majority of special-education students who are learning-disabled, mentally retarded or suffering from serious emotional disturbances. At a minimum, they require special teaching techniques that most teachers don't know. They may also need a teacher's aide to sit beside them in the class to help them learn and to monitor their behavior. Few aides are specifically trained to handle these chil-

dren—trained aides are more expensive—yet, training can make all the difference.

The case of Mark Hartmann, which created a splash in Washington's news media last year, illustrates the point. Mark has autism. He can't speak or write, and when he gets upset, he flaps his hands and makes little noises. Mark attended kindergarten and first grade in Lombard, Ill., where an experienced special-education teacher helped him fit in with his classmates.

In 1993, the Hartmann family moved to the Washington area. Mark, then 8 years old, started second grade at Ashburn Elementary School in Loudoun County, Va. The school reduced the teacher's class load and hired an aide to help Mark.

"She was a mom from the community," said autism specialist Ruppman, who consulted on the case. "She was a nice lady, but she had never worked with a child with disabilities before."

Mark's behavior deteriorated, and the class became a shambles. School officials decided to transfer him to a special class for autistic children. The Hartmanns disagreed. The case went to court, and the school system won.

Instead of allowing the transfer, however, Mark's mother moved

to Blacksburg, Va., which has a national reputation for including disabled children in regular classes. Mark attends a regular school with individual help from a trained professional.

"He's doing very well," Ruppman said, "so the story has a wonderful ending."

But the ending of the story for a majority of the nation's five million disabled children remains in doubt. Although the special-education program has taken a relatively light hit in the budget so far, Congress is cutting back on federal education dollars, including crucial aid for training teachers. Instead of taking up the slack, most states and local school districts are doing the same.

Meanwhile, in their campaign against violence, some school officials are looking to crack down on disruptive youngsters even if they are designated disabled. As the battle heats up in Congress, both sides are sharpening their anecdotes. ■



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

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FACSIMILE TRANSMISSION COVER SHEET

TO: Diana Fortuna

FAX. NO.: 456 - 7028

TELEPHONE NO.:

FROM: Eugene Sheridan DATE: 4/3/96

NUMBER OF PAGES INCLUDING COVER SHEET: 2

COMMENT:

Judy Heumann asked me to send you
a brief status statement on the Virginia
v Riley case

If questions, please call me at 401-6025

Eugene

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Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Commonwealth of Virginia, Dept. Of Education v. Riley, (No. 95-2627, 4th Cir.)

On April 4, 1996, the Fourth Circuit will hear oral argument in Commonwealth of Virginia, Dept. Of Education v. Riley, in which Virginia challenges the formal decision of Secretary Riley of the U.S. Department of Education (issued July 3, 1995) that the Individuals with Disabilities Education Act (IDEA) requires Virginia to either insure that children with disabilities who are expelled or long term suspended from school continue to receive appropriate educational service during the time that they are removed from school or forfeit its funding under the IDEA.

Virginia argues that the IDEA's express condition that participating States "ensure the provision of a free appropriate public education to all children with disabilities in the State" does not include children who are expelled or long term suspended for behavior that is not related to their disability. The Department, based on the explicit language of the statute, its legislative history, and relevant judicial decisions, interprets the statute to permit school districts to discipline these students, which can even include expelling them or long term suspending them from their regular school, but require that school districts provide them educational services in another setting, such as alternative schools, or even at home. The Department's position was buttressed when Congress, in the Improving America's Schools Act of 1994, specifically directed school districts to implement the Gun Free Schools Act (requiring the one year expulsion of children who bring guns to schools) consistently with the Department's interpretation of the IDEA when dealing with children with disabilities.

In an earlier decision, Virginia Dep't. Of Education v. Riley, 23 F.3d 80 (1994), the Fourth Circuit ordered the Department of Education to provide Virginia the opportunity for an administrative hearing on this issue before determining that it was ineligible for assistance under the IDEA. The administrative hearing was held October 11-13, 1994, and the hearing officer's decision issued April 6, 1995. Virginia has continued to receive funding under the IDEA since that time based on its representation to the Fourth Circuit that it would assure the availability of continued services to this class of students while it challenged the Department's interpretation of the IDEA in the courts.

Virginia receives about \$50 million under the provisions of the IDEA at issue in this case.

Bush admin did orig interp

The decision was in
favor of DOE on all
3 counts -- Jolita
Reynolds is sending
us more info -- she is
also very friendly / helpful
so feel free ~~to~~ call her - Elis

Discipline



FAX



U.S. DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES
OFFICE OF SPECIAL EDUCATION PROGRAMS
DIVISION OF ASSISTANCE TO STATES

FAX No: (202) 205-9179

Phone : (202) 205- 8104 (Slager)
205- 5507 (Reynolds)

Switzer Building - Room 3612

Switzer Building - Room ____

DATE: 4/12/95

TO
Elizabeth W. Cohen

FROM
Johetta Reynolds
Office of Special Education Programs

Number of Pages (NOT including this cover page): 13 (4 letters)



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

JUL 14 1993

Ms. JoAnne Boggus
Teacher
Piper High School
8000 N.W. 44th Street
Sunrise, Florida 33351-5699

Dear Ms. Boggus:

Your letter written to Diane Void of the Office of the Inspector General, dated February 8, 1993 has been referred to the Office of Special Education Programs (OSEP) for response. OSEP is the component of the Office of Special Education and Rehabilitative Services that administers Part B of the Individuals with Disabilities Education Act (Part B). Part B is the Federal law that authorizes financial assistance to States, and through them to local school districts, to assist in meeting the special educational needs of eligible children with specified disabilities in mandated age ranges. A copy of the Department's regulations implementing Part B at 34 CFR Part 300 is enclosed for your information.

In your inquiry, you request clarification of the requirements of Public Law 94-142, referred to by this Office as Part B, "regarding the discipline and/or removal of special education students who violate local school board weapons policies by bringing weapons such as guns and knives onto secondary school campuses." According to your letter, it is the policy of your local school board that "if a student brings a gun on campus and if that student is identified as a special education or handicapped student, the student (after a ten day suspension) is returned to his/her school setting with no further disciplinary action being taken."

Generally, student discipline is a State and local matter. When students with specified disabilities are involved, the requirements of Part B as they pertain to discipline of students with disabilities apply. This letter will summarize the requirements of Part B, as interpreted by the Department and the courts, that are applicable to the disciplining of students with disabilities eligible for services under Part B.

Each State and its local school districts must make a free appropriate public education (FAPE) available to children with specified disabilities in mandated age ranges. FAPE includes,

Page 2 - Ms. JoAnne Boggus

among other elements, special education and related services, provided at no cost to the parents, in conformity with an individualized education program (IEP). See 34 CFR §300.8. Part B further requires that each child with a disability must be educated with children who are not disabled, to the maximum extent appropriate, and that a range of placement options, known as a continuum of alternative placements, be made available to the extent necessary to implement each child's IEP. See 34 CFR §§300.550-300.553. Part B establishes procedural safeguards that guarantee parents an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any such decisions. These safeguards include the right to prior written notice regarding the agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, an opportunity to present complaints concerning these matters and the right to an impartial due process hearing with respect to such complaints. 20 U.S.C. §1415. See also 34 CFR §§300.504 and 300.506. During the course of any of the authorized review proceedings, the child remains in the current educational placement unless the public agency and the parents agree otherwise. 34 CFR §300.513. A child's placement may not be changed unilaterally by the public agency over the parent's objection until all review proceedings are complete.

Part B has been found by the United States Supreme Court in its decision in Honig v. Doe, 108 S.Ct. 592 (1988), to prohibit State or local school authorities from unilaterally excluding children with disabilities from the classroom for dangerous or disruptive conduct arising from their disability. Under Part B, exclusion of a student with a disability from school for longer than ten school days constitutes a change in placement, and the parents must be given written prior notice of the proposed placement change, including an explanation of applicable procedural safeguards and due process rights should they wish to challenge the proposed placement decision. 34 CFR §§300.504-300.505. School officials may, however, use their normal discipline procedures, such as temporary suspension for up to 10 school days. In addition, the use of study carrels, timeouts, or other restrictions in privileges would be permissible, to the extent that they would not be inconsistent with the child's IEP. This determination must be made, on a case-by-case basis, in light of the particular facts and circumstances. During a ten day suspension, school officials may initiate review of the student's IEP, seek to persuade the parents to agree to an interim placement, or invoke the aid of the courts to remove a dangerous student from school if they believe that maintaining that student in the current placement is substantially likely to result in injury to the student or to others.

Page 3 - Ms. JoAnne Boggus

A suspension or disciplinary removal of a student with a disability for more than 10 school days, which constitutes a change in placement, may not be imposed without a determination by a group of persons, as described in the Part B regulations at 34 CFR §§300.344 and 300.533(a)(3), that the student's misconduct is not a manifestation of the student's disability.¹ If the group determines that the student's misconduct is a manifestation of the student's disability, the student may not be suspended for more than ten school days.

If the misconduct is related to the disability, it is appropriate to review the student's placement. Nonpunitive changes in placement may be appropriate and should be implemented subject to applicable procedural safeguards. If the parents request a due process hearing under 34 CFR §300.506 to challenge an LEA's proposal to change the student's placement, that action may not be unilaterally taken over the parent's objections until all administrative and judicial review proceedings have been completed. School officials may also invoke the aid of the courts to remove a dangerous student.

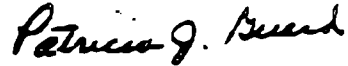
If the group determines that the misconduct is not a manifestation of the student's disability, the school district may impose normal disciplinary measures subject to the parents' right to request a due process hearing on whether the manifestation determination was correct, which would stay any long-term suspension or expulsion, until the review proceedings are completed. Under Part B, even during a disciplinary removal that exceeds 10 school days, schools may not cease educational services to students with disabilities. This is so, regardless of whether the student's misconduct is determined to be a manifestation of the student's disability. Thus, all children with disabilities, - including those who have been suspended or expelled, must be provided FAPE, and educational services may not cease for such students.

¹ If a removal of a student with a disability from school for a period of up to 10 school days is being contemplated, no prior determination by the group of persons described at 34 CFR §§300.533(a)(3) and 300.344 as to whether the student's misconduct is related to the student's disability is required.

Page 4 - Ms. JoAnne Boggus

I hope that you find the above information helpful. If we can be of further assistance, please let me know.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosure

cc: Mrs. Bettye Weir
Florida Department
of Education



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

AUG 25 1994

Mr. David J. Hagen
Superintendent
Huntington Beach Union
High School District
10251 Yorktown Avenue
Huntington Beach, California 92646

Dear Mr. Hagen:

Your letter written on behalf of the Huntington Beach Union High School District to President Clinton dated July 1, 1994 has been referred to the U.S. Department of Education's Office of Special Education Programs (OSEP) for response. OSEP is a component of the Office of Special Education and Rehabilitative Services (OSERS), and both Offices are responsible for administering the Individuals with Disabilities Education Act (IDEA). In your letter, you object to a Departmental policy requiring that students with disabilities under IDEA continue to receive educational services during periods of disciplinary exclusion from school for misconduct that is unrelated to the student's disability.

It is the Department's policy that, under the free appropriate public education (FAPE) requirements of Part B of IDEA (Part B), at 20 U.S.C. §1412(1)-(2), all States receiving funds under Part B must continue to provide educational services to students with disabilities during periods of long-term suspension or expulsion from school for misconduct that is determined to be unrelated to their disability. This Departmental policy is based on the legislative history of the Education of the Handicapped Act [the predecessor statute to the IDEA], the FAPE requirements of Part B and relevant judicial interpretations of these requirements.

Your letter mischaracterizes this Departmental policy as the "recent action of the Office of Special Education and Rehabilitative Services reinterpreting federal law without congressional authorization and requiring states to provide educational services to all disabled students even after they are properly expelled under state law." The policy position at issue is not the result of recent action but was actually publicly articulated in policy letters as early as 1989. See, e.g., letters dated May 4, 1989 to Mr. Richard Steinke of the Maryland State Department of Education and September 15, 1989 to

Page 2 - Mr. David J. Hagen

Mr. Frank E. New, of the Ohio Department of Education, also published at EHLR 213:258. Copies of the referenced letters are enclosed for your information.

In your letter, you also state that your legal counsel has advised you that this policy is "contrary to Federal law and the standard established by the United States Ninth Circuit Court of Appeals" in the case of Doe v. Maher, 793 F.2d 1470 (9th Cir. 1986). The Department previously has had the opportunity to consider this view and has rejected assertions that States receiving Part B funds located within the jurisdiction of the Ninth Circuit are exempt from complying with the Departmental policy at issue. See letter to Ruth B. Davis of the Tucson Unified School District dated March 16, 1990, published at 16 EHLR 734 (copy enclosed). As explained in the enclosed letter to Ms. Davis, the Department believes the discussion in the Ninth Circuit's decision in Doe v. Maher about the cessation of educational services when misbehavior is not a manifestation of a disability to be dicta, or expressions in the opinion that go beyond the facts before the court, and, as such, not to be controlling law.

A Federal court of appeals has issued a ruling on an assertion similar to the one made in your letter that the Department "has not sought legislation or promulgated regulations to change the law." In Metropolitan School District v. Davila, 969 F.2d 485 (7th Cir. 1992) cert. denied, 113 S.Ct. 1360 (1993), the U.S. Court of Appeals for the Seventh Circuit rejected petitioner school district's argument that the Departmental policy was a legislative rule requiring notice and comment under the Administrative Procedures Act, 5 U.S.C. §553, but instead concluded that it was an interpretive rule which explained the meaning of the statute, and did not require such rulemaking procedures.

Your letter also refers to a recent decision of the United States Court of Appeals for the Fourth Circuit in Virginia Department of Education v. Riley, 23 F.3d 80 (4th Cir. 1994), which you state "criticized the OSERS' policy." In the Fourth Circuit's decision in the Virginia case, the court concluded that the Department could not withhold Virginia's Fiscal Years 1994 and 1995 Part B grant awards because of Virginia's failure to comply without affording Virginia prior notice and an opportunity for an administrative hearing under 20 U.S.C. §1416(a). The court however, made explicit that it was expressing "no view on the merits" of the Department's policy with regard to students who are expelled from school for reasons unrelated to a disability. Id. at 87. The decision was based in part on Virginia's statements to the Court that it would continue to provide special education services to children with disabilities expelled or suspended long-term while it challenged Federal policy.

Page 3 - Mr. David J. Hagen

You assert that the Departmental policy at issue conflicts with the Goals 2000: Educate America Act. We assume that the legislation to which you are referring is the Gun-Free Schools Act, enacted as part of Goals 2000 on March 31, 1994. The Gun-Free Schools Act amends the current Elementary and Secondary Education Act of 1965 (ESEA). This new legislation states that, as a condition of receiving any assistance under the ESEA, a local educational agency (LEA) must have in effect a policy requiring the expulsion from school for a period of not less than one year of any student who brings a firearm to a school under the jurisdiction of the LEA, except that the LEA's chief administering officer may modify the expulsion requirement on a case-by-case basis. The Department interprets this "case-by-case" provision to permit school districts to discipline students with disabilities in accordance with the requirements of Part B and thereby maintain eligibility for Federal financial assistance.

Your letter also notes that nondisabled students properly suspended or expelled under State law do not receive educational services during periods of disciplinary removal. As a former school administrator, I share your concern for the problems of violence and disruption in the schools. Under Part B, the school district may implement disciplinary measures for behavior that is not related to the student's disability, including long-term suspension or expulsion, so long as the district follows the procedures mandated under Part B for changing a student's placement and the student continues to receive educational services. Even when the behavior is determined to be related to the student's disability, the school district may follow Part B procedures, or, in the case of a dangerous student, invoke the aid of the courts, to change the student's placement.

I hope that the above discussion is helpful in clarifying the Department's position.

Sincerely,



Thomas Hehir
Director
Office of Special Education
Programs

Enclosures

cc: Mr. Leo Sandoval
California State Department
of Education



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

THE ASSISTANT SECRETARY

FEB 3 1995

Ms. Patty Smith
Mr. Larry Searcy
National Parent Network on
Disabilities
1600 Prince Street, #115
Alexandria, Virginia 22314

Dear Ms. Smith and Mr. Searcy:

This is in response to your Memorandum concerning President Clinton's Memorandum for the Secretary of Education dated October 22, 1994, referred to in your letter as an executive order. The Presidential Memorandum at issue concerns the "Implementation of The Gun-Free Schools Act of 1994, and the Safe and Drug-Free Schools and Communities Act." Specifically, you ask whether this Memorandum "takes precedence over the amendments to the Individuals with Disabilities Education Act (IDEA) [referred to in your letter as the Jeffords amendment], and whether OSERS or any other disability organization provided input to the President."

The President's Memorandum states in relevant part:

The Gun-Free Schools Act of 1994 provides that within one year, every State receiving Federal aid for elementary and secondary education must have a law requiring school districts to expel from school for at least one year any student who brings a gun to school, subject to certain exceptions. . . . In the case of the Gun-Free Schools Act, enforcement should include termination of Federal assistance if you determine that a State is not in compliance.

This part of the memorandum restates the requirements of the Gun-Free Schools Act. It is the Department's position that the Gun-Free Schools Act does not take precedence over the disability laws, and that these laws can be reconciled, giving effect to each law. Compliance with the Gun-Free Schools Act may be achieved consistently with the requirements that apply to students with disabilities, so long as discipline of such students is determined on a case-by-case basis in accordance with the disability laws.

Page 2 - Ms. Patty Smith and Mr. Larry Searcy

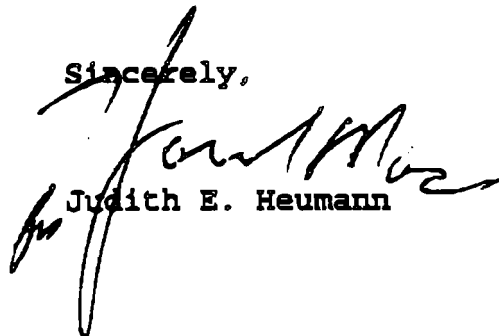
In implementing the expulsion requirement of the Gun-Free Schools Act, each State's law must allow the chief administering officer of the school district to modify the expulsion requirement on a case-by-case basis. Disabled students who bring firearms to school may be subject to the mandatory expulsion requirement of the Gun-Free Schools Act only if the following conditions are met: a group of persons knowledgeable about the student determines that the behavior of bringing a firearm to school is not a manifestation of the student's disability; applicable procedural safeguards are followed; and for students eligible for services under IDEA, educational services continue during the expulsion period.

We appreciate your writing and taking the opportunity to share your views with us on this important issue. Please be assured that the Department maintains regular contact with White House staff in coordinating the implementation of policies relevant to the rights of disabled students and their parents.

We plan to issue guidance on the implementation of the recent amendments to IDEA and the Gun-Free Schools Act very shortly. I will make sure that a copy of this guidance is provided to you after it is issued.

In the meantime, if I may be of further assistance, please let me know.

Sincerely,



Judith E. Heumann



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

APR 6 1995

Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Your letter dated March 8, 1995 to the Office of Legislation and Congressional Affairs, written on behalf of your constituent, Ardeth L. Weed, Interim Principal/Superintendent of the Oak Run Elementary School District, has been referred to the Office of Special Education and Rehabilitative Services (OSERS) for response. OSERS administers Part B of the Individuals with Disabilities Education Act (Part B), the Federal law that authorizes assistance to States, and through them to local school districts, to assist in meeting the unique educational needs of children with specified disabilities.

Your constituent's letter concerns a policy of the Department that requires the continued provision of educational services to disabled students subject to disciplinary exclusion from school for misconduct that is not a manifestation of their disability, and objects to changing California law to make it consistent with this Departmental policy. In her letter, your constituent also references a resolution adopted by the Governing Board of the Oak Run Elementary School District which opposes this Departmental policy. Therefore, your constituent urges "support of all legislative and administrative efforts to restore and maintain an appropriate disciplinary balance in our public schools and to make our public schools safer places for all students." This letter will discuss the basis for the Department policy and reference recent statutory changes to Part B as they affect students who bring firearms to school.

As conditions for eligibility for assistance under Part B, each State must have in effect a policy that assures all children with disabilities the right to a free appropriate public education (FAPE), and must make FAPE available to all children with disabilities within its mandatory FAPE age range. 20 U.S.C. §1412(1)-(2)(B). FAPE includes, among other elements, the provision of special education and related services, at no cost to parents, in conformity with an individualized education program (IEP). 20 U.S.C. §1401(a)(18) and 34 CFR §300.8. It is the Department's policy that, under the FAPE requirements of Part B, at 20 U.S.C. §1412(1)-(2), all States receiving funds under Part B must continue to provide educational services to

Page 2 - Honorable Dianne Feinstein

students with disabilities during periods of long-term suspension or expulsion from school for misconduct that is not a manifestation of their disability. This policy is based on the legislative history of the Education of the Handicapped Act [the predecessor statute to the Individuals with Disabilities Education Act], the FAPE requirements of Part B and relevant judicial interpretations of these requirements.

In her letter, your constituent also asserts that the current State law in California, which is contrary to the Department's policy, is based on the standard established by the Ninth Circuit Court of Appeals decision in Doe v. Maher, 793 F.2d 1470 (9th Cir. 1986). The Department believes the discussion in the Ninth Circuit's decision in Doe v. Maher about the cessation of educational services when misbehavior is not a manifestation of a disability to be dicta, or expressions in the opinion that go beyond the facts before the court, and, as such, not to be controlling law. Further, Doe v. Maher was decided prior to the issuance of the Department's policy interpretation and the court did not consider that interpretation in reaching its decision. Therefore, all States receiving Part B funds, including States within the jurisdiction of the Ninth Circuit, must continue to provide educational services to disabled students who are properly expelled for misconduct that is not a manifestation of their disability. See letter to Ruth B. Davis of the Tucson Unified School District dated March 16, 1990, published at 16 EHLR 734 (copy enclosed).

A Federal court of appeals has issued a ruling relating to the assertion made in your constituent's letter that the Department "has not sought legislation or promulgated regulations to change the law." In Metropolitan School District v. Davila, 969 F.2d 485 (7th Cir. 1992) cert. denied, 113 S.Ct. 1360 (1993), the U.S. Court of Appeals for the Seventh Circuit rejected petitioner school district's argument that the Departmental policy was a legislative rule requiring notice and comment under the Administrative Procedures Act, 5 U.S.C. §553, but instead concluded that it was an interpretive rule which explained the meaning of the statute, and did not require such rulemaking procedures.

Your constituent's letter also asserts that the Departmental policy at issue exempts all disabled students from expulsion and conflicts with the Goals 2000: Educate America Act. We assume that the legislation to which she is referring is the Gun-Free Schools Act. While educational services must continue for students with disabilities who are expelled, students with disabilities are not exempt from expulsion. In fact, under the Gun-Free Schools Act, which must be construed in a manner consistent with Part B, disabled students who bring firearms to school are subject to the mandatory expulsion requirement of the Gun-Free Schools Act if a group of persons knowledgeable about

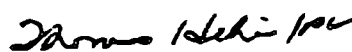
Page 3 - Honorable Dianne Feinstein

the student determines that the behavior of bringing a firearm to school is not a manifestation of the student's disability; applicable procedural safeguards are followed; and educational services continue during the expulsion period.

Recent amendments to Part B give school authorities additional flexibility, under certain circumstances, in protecting the safety of other students when a student with a disability brings a firearm to a school under a local school district's jurisdiction. A copy of these amendments is enclosed for your constituent's information.

I hope that this information is helpful in responding to your constituent. If we can be of further assistance, please let me know.

Sincerely,



Thomas Mehri
Director
Office of Special Education
Programs

Enclosures

438

"(S)(A) If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

"(B) If additional funds become available for making payments under this subsection for such fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced."

(b) **EFFECTIVE DATE.**—Subsection (a) and the amendments made by subsection (a) shall take effect on October 1, 1994.

SEC. 316. LOCAL CONTROL OVER VIOLENCE.

(a) AMENDMENTS.—

(1) **IN GENERAL.**—Paragraph (3) of section 615(a) of the Act (20 U.S.C. 1415(a)(3)) is amended—

(A) by striking "During" and inserting "(A) Except as provided in subparagraph (B), during"; and

(B) by adding at the end the following new subparagraph:

"(B)(i) Except as provided in clause (iii), if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting, in accordance with State law, for not more than 45 days.

"(ii) The interim alternative educational setting described in clause (i) shall be decided by the individuals described in section 603(a)(20).

"(iii) If a parent or guardian of a child described in clause (i) requests a due process hearing pursuant to paragraph (2) of subsection (b), then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise.

"(iv) For the purpose of this section, the term 'weapon' means a firearm as such term is defined in section 921 of title 18, United States Code."

(2) **EFFECTIVE DATE.**—Paragraph (1) and the amendments made by paragraph (1) shall be effective during the period beginning on the date of enactment of this Act and ending on the date of enactment of an Act (enacted after the date of the enactment of this Act) that reauthorizes the Individuals with Disabilities Education Act.

(b) **LIMITATION.**—Nothing in the Individuals with Disabilities Education Act shall supersede the provisions of section 14601 of the Elementary and Secondary Education Act if a child's behavior is unrelated to such child's disability, except that this section shall be interpreted in a manner that is consistent with the Department's final guidance concerning State and local responsibilities under the Gun-Free Schools Act of 1994.

To: DPC Staff

THE WHITE HOUSE
WASHINGTON

April 10, 1995

MEMORANDUM FOR DISTRIBUTION

FROM: KITTY HIGGINS

SUBJECT: Summary of Daily Cabinet Activity
April 10 - April 28, 1995

Monday, April 10, 1995

- **DOC -- Endangered Species Listing:** This week, Commerce plans to release the endangered species listing of four species of coastal coho salmon in the Northwest.
- **DOC -- Georges Bank Fishery In New England:** An extension of current emergency measures is likely to be signed in the next few weeks. Commerce expects extensive regional coverage of this contentious issue.
- **DOE -- Visit of the Prime Minister of Pakistan:** This week Secretary O'Leary participates in several meetings and events with Prime Minister Bhutto. Last September, Secretary O'Leary traveled to Pakistan with 100 U.S. business leaders and witnessed the signing of \$4 billion in Energy agreements and initiated investment discussions. Events include: Witnessing additional business agreements between the American business community and the government of Pakistan; Investor Conference in New York; Financial Roundtable in Washington; One-on-One meetings; and the Vice-President's dinner.
- **DoEd -- Special Education in Virginia:** A decision is expected by the hearing officer early this week in the dispute between the Department and the Commonwealth of Virginia, over the issue of providing educational services to disabled children and youth who are suspended long-term or expelled from schools. This case has received substantial media attention. *parties will have 15 days to respond*
- **DoEd -- Direct Lending:** Deputy Secretary Kunin will participate in a Safe Schools event and a Direct Lending event in Connecticut on April 10 with Congresswoman Rosa DeLauro.

1 yr ago - VA-constit, developing new rules
advocacy agency
↳ VA would allow expulsion
we said VA would need to Δ rule
Gov: C Fiscal don't want to Δ

took us to court - we weren't going to
approve our state plan

hearing: held in summer
hearing officer upheld Dept's
actions -

1. DOE has author to w/hold funds
2. Under current law - kids expelled
→ but educa services must
be continued

3. VA said DOE couldn't do
policy letters ????

now parties'll start
responding to full process

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

02-Apr-1996 04:25pm

TO: Diana M. Fortuna

FROM: Carol H. Rasco
 Domestic Policy Council

CC: Elizabeth E. Drye

SUBJECT: Education as in the "special" variety

I wondered when POTUS would ask me the question...and here it came on the March 22-29 Cabinet report under the Dept. of Justice where the Commonwealth of Va. v. Riley suit was reported. The page is on its way via fax to you, Diana.

The President's question to Leon and me is: Isn't this a double standard? Is it bad policy?

And of course he is probably remembering my sentiments on this issue in the past which are : I expected Hamp Rasco to be held to the same behavioral standards as his sister. Lots of special ed folks don't feel as I do as you know.

Do you have anything from Education that explains their rationale on this?

Thanks.

ce Steve

Possible Re-write of discipline section. New language is in bold. (In addition, some language from prior draft has been omitted or rearranged.)

Discipline

Our nation's schools must be safe, disciplined, and drug-free. This Administration has made tremendous strides towards this goal through a variety of measures, including issuing a Presidential Directive to enforce the "zero tolerance" measures outlined in the Gun-Free Schools Act, supporting student athlete drug testing before the Supreme Court, and strengthening and expanding the Safe and Drug-Free Schools and Communities Act. Clearly, in order to maintain safe, orderly, and drug-free classrooms, schools must be able to discipline all children, including children with disabilities, and teach all children to live by rules.

That is why I support the expansion of schools' authority to discipline students with disabilities and to make it clear that schools can suspend or expel students with disabilities who bring weapons and illegal drugs to school. As you know, the Administration proposed to expand current law, which allows school officials to unilaterally transfer a child with a disability who brings a gun to school to an interim educational placement for up to 45 days, to apply to other types of weapons. I am pleased that H.R. 3268 includes this proposal, and I support the bill's further expansion of this authority to cover children who bring illegal drugs to school. The use of illegal drugs is a grave threat to our children's physical and mental health, and illegal drugs have no place in our schools. The Administration's bill also proposed to allow hearing officers (but not school personnel) to change the placement of a child who is substantially likely to cause injury, and I am pleased that H.R. 3268 includes this proposal as well.

Despite my support for these provisions, I have some significant concerns that proposed section 615(k) goes too far by providing school districts substantially expanded authority that could greatly harm children with disabilities and that can be misused to inappropriately remove children from the classroom.

1. "Stay put." I agree that school officials should be able to unilaterally transfer a child with a disability who brings a weapon or illegal drugs to school to an interim educational placement for up to 45 days. At the same time, I believe that the bill should include a clear and objective definition of the terms "weapon" and "illegal drugs", so that children with disabilities are not subject to arbitrary and unequal application of vague or subjective definitions.

Δ from
H. W. W. - OK

My concerns about the potential for misuse of disciplinary provisions against children with disabilities also leads me to object to language in the bill that would weaken the "stay put" provisions of the Act by allowing school personnel to unilaterally change the placement of children with disabilities who commit assault and battery at school. The bill would allow school personnel to unilaterally change the placement of such a child for up to 55 school (not calendar) days (and, if the parents contest that change, until that dispute is resolved) even if

the child's behavior was relatively minor, caused no injury or damage, and was clearly a manifestation of the child's disability. **Moreover, as I mentioned above, the bill includes our proposal** to allow hearing officers (but not school personnel) to change the placement of a child who is substantially likely to cause injury. Because this new authority is sufficient to deal with cases of assault and battery, the bill should omit as unnecessary any separate treatment of that misconduct.

say - we have already addressed

Finally, we need to remember that the sad history before the "stay put" protection was added to Federal law was that school officials routinely used disciplinary measures to remove children with disabilities simply because they were difficult to educate. We must guard against weakening the "stay-put" protection in ways that could result in the exclusion of children with disabilities from educational opportunities.

2. Cessation of services. I think we can all agree that children need to understand the importance of following school rules and the consequences, to themselves and others, of their misconduct and that removal of children from the classroom is sometimes necessary to ensure safety and discipline. **That is why I support provisions that allow schools to unilaterally remove from school students who bring weapons or drugs to school and that permit hearing officers to order speedy removal of students who are substantially likely to cause injury.** At the same time, I firmly believe that children regardless of whether or not they are disabled who have been expelled or suspended from school will do better in the long run if they continue to receive educational services in some other setting than if they are completely cut off from those services. Among other benefits, this approach can help keep children and youth from engaging in activities that threaten the safety of their communities.

I am, therefore, concerned that H.R. 3286 would move in the opposite direction by permitting school districts to completely terminate educational services to children with disabilities for certain misconduct if their behavior is not a manifestation of their disability and if services would be terminated for non-disabled children for the same misconduct. We know that educational results for students with disabilities who are excluded from educational services are significantly worse than for non-disabled children who are excluded from those services.

It is contrary to the goals of the IDEA, as well as the 20-year-old statutory obligation to provide a free appropriate public education (FAPE) to all children with disabilities, to permit students with disabilities to be excluded entirely from educational services. Children with disabilities whose behaviors are not a manifestation of their disabilities ought, with appropriate safeguards, to be subject to the same rules and disciplinary measures as non-disabled children are, but they should not be completely cut off from education.

I am particularly opposed to the termination of services for children with disabilities who commit an "assault and battery," as the bill would permit. Determining whether a particular action, such as throwing an eraser or pushing another child on the playground, constitutes assault and battery in the school setting (and outside the safeguards and standards of the criminal law) is a highly subjective undertaking, and one that could easily be misused against children with disabilities. Moreover, certain disabilities cause children to engage in behaviors, more frequently than other children, that could fit within a State's definition of assault and battery or that school officials may be tempted to characterize as assault and battery. Because

Such as autism

the determination of whether a particular act was, or was not, a manifestation of the child's disability is also a subjective and imprecise undertaking, the odds are thus unacceptably high that a child with a disability will be inaccurately determined to have committed assault and battery that is not a manifestation of his or her disability and, as a result, will be cut off from educational services that are essential to his or her chances of leading a productive and independent life.

My objections to allowing the complete cessation of services are heightened by the bill's failure to include adequate safeguards for the affected children. For example, there is no provision for automatic review of an IEP team's determination that the behavior was not a manifestation of the disability. Because many parents, particularly low-income parents, do not have the resources to challenge that determination, their children will be cut off from the educational system. In addition, the factors to be considered in determining whether or not a child's behavior was a manifestation of the child's disability are highly subjective and no rules of decision are provided for the IEP team (to know which way any of these factors cut.)

prefer my sentence

Why not my 9 on give stay put ses a try?

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-May-1996 10:47am

TO: Constance J. Bowers

FROM: Diana M. Fortuna
 Domestic Policy Council

SUBJECT: discipline section

Here are my line-by-line comments on this section. However, since I have still not talked to Rahm, you should not take this to be a signoff on the letter at this time. I know it's Thursday and we need to get it out, but Carol feels very strongly that we must touch base with him, and that hasn't happened yet. I will really try to get it done today. But if Education is complaining they can call me about it.

Comments on education's rewrite of discipline section:

3rd paragraph: say "goes too far by risking great harm to children" and drop language about "providing school districts substantially expanded authority". Why focus on opposing greater authority to school districts?

5th para: drop "also" in 2nd line; this is really the first objection; prior paragraph just requests a clear definition.

Later in the para: "Moreover, as I mentioned above, the bill includes our proposal": make it clearer that we believe we have already addressed this concern.

8th para: The sentence "It is contrary": this makes no sense to me, to cite the law as an objection to something when Congress is considering CHANGING the law. I would vote to drop it, unless someone can explain its purpose to me.

9th para: Can we put assault and battery in quotes, since we are saying we think it is a loose definition?

I have no idea what the phrase between the dashes "and outside the safeguards and standards of the criminal law" means.

After "Moreover, certain disabilities": add "such as autism".

Final paragraph: Substitute following sentence for "Because many parents": "This may place the children of low income parents at particular risk of being cut off from the educational system."

Focus on children rather than legal challenges and income.

I still like my paragraph: "Furthermore, it seems likely that any final bill will make it easier for schools to remove children temporarily from the classroom, through changes to the stay put provisions. We believe that schools should exercise these new powers and see what benefits they bring in terms of discipline, rather than considering going further to authorize cessation of services." I hear Education doesn't like it; I'm not sure why. Maybe the overall point could still be made, even if they don't like some particular phrase; maybe they think it is a good point but shouldn't be made in this context; or maybe they just hate the whole concept. But I think it is a useful argument.

EXECUTIVE OFFICE OF THE PRESIDE
EXECUTIVE OFFICE OF THE PRESIDE

08-May-1996 01:07pm

TO: (See Below)

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: Special education discipline; please look at this t
SUBJECT: _____

Education has talked to Senate staff as we requested on the special ed discipline issue. Attached is a summary of what they learned.

You will recall that the question was whether to cease services for kids who bring guns or drugs to school. The Senate has cleared this in committee, and the House is considering whether to do the same.

Education was not able to come up with entirely complete or helpful answers from Feinstein, Dorgan, and Lieberman, because their staffs aren't that knowledgeable on special education issues, and so they couldn't predict where the member would finally come down if things got tough.

The House committee markup on the bill may be tomorrow, although it will more likely be delayed. But, since we don't know for sure, we have to move quickly. Education has sent OMB its draft letter to the Hill opposing cessation, and wants to get it out asap.

Next Steps: Carol is tentatively prepared to go with the Department's recommendation and oppose cessation, but wants to know your take on this.

Attached is my revision of Education's draft language to go to the Hill, to give us something a little more concrete to work off of. I made a number of changes, and focused it more on our concern about public safety.

(One thing that surprised me is that Education's draft urges states and locals not to cease services even for non-special ed kids. We have not taken that position previously. However, I think they have decided to drop this.)

Please let me know your views as soon as possible.

Feinstein: Staff says she feels strongly about guns, but also about education, and may oppose cessation of services.

Dorgan: Personally he opposes cessation of services, so he wouldn't criticize us if we opposed cessation. But it is not clear if he would stand with us.

Lieberman: He wouldn't criticize us if we opposed cessation, but not clear if he'd stand with us.

Harkin: He must support the compromise he has already endorsed, which allows cessation of services for guns or drugs, but as a long-time disability advocate his heart isn't in it. He wouldn't criticize us if we oppose cessation. At a later date, if things go badly enough in conference, he might argue he was no longer obligated to support the Senate compromise.

For what it's worth, Education also wanted us to know that Cong. Miller, who worked with Dorgan and Feinstein on the gun measure, opposes cessation, along with California's elected chief state school officer.

Rewrite of education's draft:

It is critical that children understand the importance of following school rules, and the consequences, to themselves and others, of their misconduct. To ensure that classrooms are safe, it is sometimes necessary to remove a child from the classroom.

However, cutting off children with disabilities completely from educational services threatens the safety of our communities, since leaving children idle and with no structure whatsoever increases the odds that they will engage in criminal behavior.

This is in addition to the harm it causes children in terms of their ability to lead a useful and productive life. *Moreover, we know that*

I am, therefore, concerned that HR 3286 would permit school districts to completely terminate education services to children with disabilities for certain types of misconduct if their behavior is judged not to be a manifestation of their disability. Children with disabilities whose behaviors are not a manifestation of their disabilities ought, with appropriate safeguards, to be subject to the same rules and disciplinary measures as non-disabled children are, but they should not be completely cut off from education.

In addition, we have a special obligation to children with disabilities because of the history of these children being excluded from school, often with discipline used as an excuse for exclusion. Therefore, I am particularly opposed to terminating services for children with disabilities who commit "assault and battery", as the bill would permit. Determining whether a particular action, such as throwing an eraser or pushing another child on the playground, constitutes assault and battery in the school setting is a highly subjective undertaking, and one that could easily be misused against children with disabilities.

Moreover, certain disabilities, such as autism, cause children to engage in behaviors more frequently than other children that could fit within a state's definition of assault and battery, or that school officials may be tempted to characterize as assault and battery. Because the determination of whether a particular act was, or was not, a manifestation of the child's disability is also a subjective and imprecise undertaking, we are fearful mistakes will be made, and children will be cut off from education services that are essential to his or her chances of leading a productive and independent life.

Furthermore, it seems likely that any final bill will make it easier for schools to remove children temporarily from the classroom, through changes to the "stay put" provisions. We believe that schools should exercise these new powers and see what benefits they bring in terms of discipline, rather than considering going further to authorize cessation of services.

My objections to allowing the complete cessation of services are heightened by the bill's failure to include adequate safeguards for the affected children. For example, there is no provision for automatic review of an IEP team's determination that the behavior was not a manifestation of the disability. This may place the children of low-income parents at particular risk of being cut off from the educational system. In addition, the factors to be considered in determining whether or not a child's behavior was a manifestation of the child's disability are highly subjective and no rules of decision are provided for the IEP team.

Distribution:

TO: Rahm Emanuel
TO: Kenneth S. Apfel
TO: Stephen R. Neuwirth
TO: Tracey E. Thornton
TO: Ananias Blocker
TO: Lisa B. Fairhall

CC: Michelle Crisci
CC: Elizabeth E. Drye

Exp. go to have pos ; E for no ch
 11. 1 on stay put

DISCIPLINE ISSUES IN IDEA REAUTHORIZATION

	Cessation	Stay-put
Current Law	No	Guns Removal for up to 45 days ("Jeffords amdt")
Dept. of Education proposal	No	Add weapons to above Hearing officer can remove if "dangerous"
Senate	For drugs or weapons, if not a manifestation of child's disability	Removal for "disruptive" behavior (lesser standard than "dangerous") Includes some protections • principals w/IEP see w/b road • drugs
House	Same as Senate, plus assault & battery Allows for state definition of terms	?? • remove by lower than • weap, drugs, a+b • state def princ.
Dept. of Education draft reaction	Cessation bad, but particularly fight assault & battery and state definition of terms in House bill	??

* Resolve by Fri/ reconvene re whether CP/P mtg makeup next wk

- final bill likely to be cessation for drugs/weapons

- advocates (reluctantly) sptd senate bill

* call away Blocker

Wilson signed bill saying no cessation

Feinstein / Dorgan ? Gun Free

- Mass?

* Gun Free - 1 yr required / cessation @ state option



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

APR 26 1995

OSEP- 95-16

OSEP MEMORANDUM

TO : Chief State School Officers

FROM : Judith E. Heumann *J. Heumann*
Assistant Secretary
Office of Special Education and
Rehabilitative Services

Thomas Hehir *TH*
Director
Office of Special Education Programs

SUBJECT: Questions and Answers on Disciplining Students with
Disabilities

The purpose of this memorandum is to provide guidance about the current legal requirements of the Individuals with Disabilities Education Act (IDEA) for addressing misconduct of students with disabilities and to correct the misunderstanding that students with disabilities are exempt from discipline under current law. This memorandum also includes a discussion of the recent amendments made to IDEA by the Improving America's Schools Act and the recently enacted Gun-Free Schools Act as they apply to students with disabilities who bring firearms to school. If changes are made to current law in the reauthorization of the IDEA, further guidance will be issued to reflect them.

Two other Federal laws that are enforced by the Department's Office for Civil Rights (OCR)--Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 (ADA), Title II--also govern school districts' obligations to provide educational services to disabled students. Unless otherwise noted, compliance with the IDEA requirements as set forth in this memorandum would satisfy the requirements of Section 504 and Title II of the ADA.

Public Law 94-142, the Education for All Handicapped Children's Act of 1975 (now Part B of IDEA) was enacted to address concerns that disabled students, particularly those whose disabilities had behavioral components, were excluded from any public education or were not provided an education appropriate to their unique learning needs. Thus, IDEA recognizes the right of each disabled

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student to a free appropriate public education (FAPE), which includes an array of rights and procedural protections for eligible students and their parents. One of the central tenets of IDEA is the requirement that each disabled student's program and placement must be individually designed to meet his or her unique learning needs. Today, as school safety takes on increasing importance for all of us, we want to underscore the compatibility of guaranteeing the rights of students with disabilities with the goal of school safety.

Clearly, school safety starts with the commitment of every student to take full responsibility for his or her own safety and the safety of others both in and out of school. This commitment to personal responsibility is essential to ensuring that the goal of safe schools is realized. For any student who misbehaves, a school should decide what action is most likely to correct the misconduct. For a disabled student, this decision may need to take into account the student's disability.

As we travel throughout the country, we have met with parents and school officials, who have underscored the importance of working cooperatively to address concerns when signs of misconduct by students with disabilities first appear before more drastic measures are considered. We also have visited schools that have implemented models for behavior management so effectively that, in many instances, the need for subsequent interventions has been greatly reduced, or even eliminated entirely. The Department encourages and supports the development and dissemination, at the local, State and national levels, of effective classroom and behavior management practices. We also believe that there are a number of positive steps that educators can take to address misconduct as soon as it appears to prevent the need for more drastic measures. For students whose disabilities have behavioral aspects, preventive measures, such as behavior management plans, should be considered and can be facilitated through the individualized education program (IEP) and placement processes required by IDEA. Teacher training initiatives in conflict management and behavior management strategies also should be considered as these strategies are implemented.

If the steps described above are not successful, the appropriate use of measures such as study carrels, time-outs, or other restrictions in privileges could also be considered, so long as they are not inconsistent with a student's IEP. In addition, a disabled student may be suspended from school for up to ten school days. No prior determination of whether the misconduct was a manifestation of the student's disability is required before any of the above measures can be implemented. If the misconduct is such that more drastic measures would be called for, educators should review the student's current educational program and placement and consider whether a change in placement would be an appropriate measure to address the misconduct.

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Where educators believe that more drastic measures are called for, a disabled student may be removed from school for more than ten school days only if the following steps are taken. First, a group of persons knowledgeable about the student must determine whether the student's misconduct was a manifestation of his or her disability. If this group determines that the misconduct was not a manifestation of the student's disability, the student may be expelled or suspended from school for more than ten school days, provided applicable procedural safeguards are followed and educational services continue during the period of disciplinary removal.

However, if the group determines that the student's misconduct was a manifestation of his or her disability, the student may not be expelled or suspended from school for more than ten school days. Educators still can address the misconduct through appropriate instructional and/or related services, including conflict management and/or behavior management strategies, student and teacher training initiatives, measures such as study carrels, time-outs, or other restrictions in privileges, so long as they are not inconsistent with a student's IEP, and, as a last resort, through change of placement procedures in accordance with IDEA. Moreover, the school district has the option of seeking a court order at any time to remove the student from school or to change the student's placement if it believes that maintaining the student in the current educational placement is substantially likely to cause injury.

In addition, recent amendments to IDEA made by the Improving America's Schools Act permit educators to make immediate interim changes of placement for students with disabilities who bring firearms to school for up to 45 calendar days. If the student's parents request a due process hearing, the student must remain in the interim placement until the completion of all proceedings, unless the parents and school district can agree on another placement.

The questions and answers with this memorandum provide a description of the options outlined above in greater detail. We hope that this information will be helpful as we all strive to promote safe and effective schools. We urge you and your staff to review this information carefully and to disseminate it to interested individuals and organizations throughout your State. For easy reference a table of contents, setting forth all sixteen questions and their corresponding page numbers, immediately follows.

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Further questions can be directed to the Office of Special Education Programs by contacting Ms. Rhonda Weiss at (202) 205-8824 or Dr. JoLeta Reynolds at (202) 205-1507.

Attachment

cc: State Directors of Special Education
RSA Regional Commissioners
Regional Resource Centers
Federal Resource Center
Special Interest Groups
Parent Training Centers
Independent Living Centers
Protection and Advocacy Agencies

Willy Wur
Mon $\frac{1}{2}^{30}$ 5
Tues @ 3
We

Parent to Julie

1. Harkin: must support the compromise he has already endorsed, which allows cessation of services for guns or drugs; wouldn't bad mouth anyone who opposed cessation. If things changed enough in conference,

in conf, if things change, all bets are off; could criticize

2. Dorgan: Personally he doesn't not believe in cessation of services, so he wouldn't criticize anyone who opposed cessation oppose us; not clear if he'd stand w/us

3. Feinstein: feels strongly about guns, but also education;

chief state school officer, for calif, elected superintendant: opposes cessation

Cong. Miller important Dem on House side, on committee; also anti-gun sponsor; worked w/Dorgan and Feinstein: opposes cessation, came up in colloquy 2 yrs ago

4. Lieberman: didn't talk to LD Larry Barnet, but William; wouldn't oppose us, but unclear if he'd stand w/secy

Meeting tomorrow am w/cong staffers and gps to discuss markup; could be delayed

Tracey, Rahm - need suggestions

*secy - staffed
CROK
oppose but ...*