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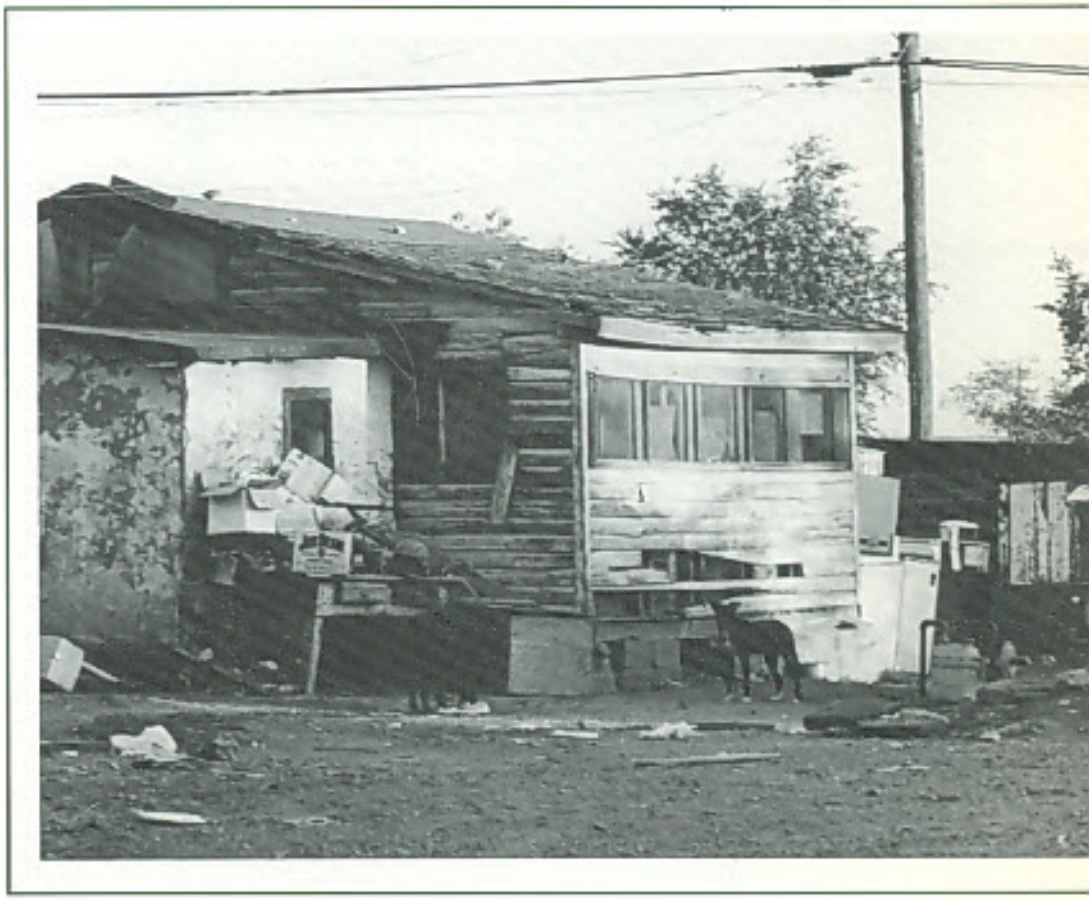

Migrant Farmworker Housing

School Discipline and the Need to Preserve Rights of Students with Disabilities Under the Individuals with Disabilities Education Act

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I. Introduction

Parts A and B of the Individuals with Disabilities Education Act (IDEA) /1/ are permanently authorized. /2/ Congress took this unusual step in 1986 to insure that the civil rights of students with disabilities, as established by the 1975 federal statute, could never be used as political fodder. Last term, for the first time since the Act was indefinitely authorized, the respective committees of the Senate and House initiated and expended substantial resources in an unsuccessful effort to amend Part B of the IDEA through reauthorization. Critical substantive and procedural rights of students with disabilities came close to being eliminated. Only adjournment and a growing but delayed recognition of angry opposition led by grass-roots parent groups in the Midwest thwarted the elimination of their children's rights. These parents recognized that their children were being made scapegoats of school violence and understood only too well that their children's civil rights were at stake. This article discusses the current rights of students with disabilities to a free appropriate education and the law regarding school discipline of students with disabilities. It describes the recent congressional efforts to undermine the basic principles of the IDEA even though school officials have adequate authority to address school discipline issues related to students with disabilities and argues that we should be moving forward to implement and enforce current law requirements that all students with disabilities are given the opportunity to attain the same educational outcomes established for all other students.

II. Civil Rights Statute for Students with Disabilities Barely Survives

For almost three years special interest groups representing school board members, administrators, and teachers targeted for revision, if not for elimination, the IDEA's key substantive and procedural provisions that protect children with disabilities from being excluded from public schools, denied a free appropriate education, and subjected to harsh disciplinary measures. Minimal data were proffered to support this call for drastically "gutting" the Act; anecdotal testimony was excessive and spurious. Under the guise of school safety, these groups sought legislative changes, which, as ultimately proposed by both Houses of Congress, would, if enacted, have eliminated the enforceable right of all students with disabilities to receive a free appropriate public education and to "stay put" in their current educational placement during the pendency of any complaints or proceedings. /3/ This proposed legislation also authorized school personnel to exclude students

unilaterally from their educational placements for being "seriously disruptive" or for discipline-related reasons.

H.R. 3268 was successfully reported out of the full Committee on Economic and Educational Opportunities on June 10, 1996, and, although S. 1578 was never reported out from the Senate Labor and Human Resources Committee, attempts to reach agreement on a manager's package continued, virtually up to the date of adjournment. /4/ By authorizing schools to deny an education to certain students with disabilities and to remove students unilaterally from their current placements, the message sent by the proposed legislation was clear; Congress was prepared to undermine two of the most basic principles of the IDEA -- the "zero reject" principle and the right of students to stay put and to remain in their current educational placements barring their parents' consenting to a proposed change. In 1975, when the 94th Congress enacted the Education for All Handicapped Children's Act, public law number 94-142 (the IDEA's predecessor), Congress resolved that no child, regardless of the severity of his or her physical, cognitive , or emotional-behavioral disability, is too disabled to receive an appropriate education tailored to meet the child's needs. /5/ Subsequently, in 1988, when the U.S. Supreme Court interpreted the stay-put provision, /6/ the Court concluded that Congress, based on a shameful history of mistreatment, abuse and exclusion of children with disabilities from public schools, /7/ intended this provision to strip school districts of the unilateral authority to exclude students with disabilities, particularly emotionally disturbed students, from school. /8/

There is no persuasive evidence to suggest that the IDEA changes sought by the "educational community" are necessary to address school safety issues. The Supreme Court's interpretation of the stay-put provision of the IDEA in Honig v. Doe allowed school districts the flexibility to deal with children who were substantially likely to cause serious injury to themselves or others. /9/ Nothing has changed to abate the concerns expressed by the Supreme Court in 1988 or to warrant rewriting this civil rights statute for students with disabilities. To the contrary, the frequency with which state and local educational agencies deny students with disabilities the same high-quality programming and services offered to all students vehemently argues against their being given an iota of increased flexibility to remove students with disabilities from the classroom because of a specter of violence. While valid concerns exist about the scarcity of public resources and consistently higher costs of providing appropriate educational programming and services to students with disabilities, there is no justification for victimizing these students by denying them their basic rights -- civil rights critical to ensuring that they receive a full, free, and appropriate education with their nondisabled peers.

III. What Is Required by Current Law?

A. The "Zero Reject" Principle and the Right to a Free Appropriate Public Education

Part B of the IDEA requires all states accepting funds under the statute to provide a free appropriate public education to all students with disabilities from age 3 to 21 who need special education. /10/ An appropriate education is free, consistent with state standards, and provided in accordance with an individualized education program (IEP) designed to meet the student's individual needs. /11/

The IEP is developed by qualified school personnel, the student (when appropriate), and the student's parent. /12/ All children with disabilities have an enforceable right to a free appropriate public education consisting of such special education and related services as are necessary to meet the students' individual needs. /13/ Under current law this right is not conditional. It is not limited to those students with disabilities who do not have behavioral difficulties. It is not limited to those students who receive adequate support services and behave appropriately in school. Nor is the right to a free appropriate public education limited to those students with disabilities whose parents have the financial resources to obtain evaluations and testimony from qualified experts able to challenge a manifestation determination that their behavior is not related to their disability.

The IDEA also creates for all students with disabilities an independent right to be educated to the maximum extent possible with nondisabled peers. /14/ Hence, under current law, a school district may not expel or deny education to any student, whether or not he or she is able to demonstrate a "nexus" between behavior and disability. /15/ All placement decisions, including disciplinary exclusions that propose to change a student's placement to homebound or an alternative placement must be made consistent with this right. Even when a student with a disability is properly excluded from his or her current educational placement by a court of competent jurisdiction after determining that the child's continued placement is substantially likely to cause injury to self or others, an alternative appropriate public education must be provided to the student during the duration of the injunction. /16/

For students who demonstrate aggression or challenging behaviors, the school's responsibility for providing a free appropriate public education includes a duty to address the inappropriate behaviors and their underlying causes. /17/ There is no lack of research recognizing the link between inadequate, inappropriate education programming and behavior concerns in the classroom. IEP goals, short-term and long term objectives, and specialized instruction and related services, and evaluative measures ought to be designed to enable the student to meet the educational performance standards and outcomes, including behavioral goals and objectives, established for all students. /18/ Programming and support services necessary to meet the student's needs shall be provided in the regular classroom to the maximum extent appropriate. For any student with disabilities protected by the IDEA, her or his IEP must be used as the primary vehicle for attaining such outcomes. Furthermore, as currently written, the IDEA requires each state to have a mandatory comprehensive personnel development system /19/ and requires states and school districts to keep abreast of promising methods, strategies, and new technologies for meeting the educational needs of all students with disabilities, and utilize this state-of-the art knowledge in developing and implementing IEPs and instructionally relevant evaluations. /20/

The case has not been made for denying a free appropriate public education to students with disabilities. First, no data exist suggesting that providing alternative education for students with disabilities compromises school safety in any way. Second, poor children are likely to be unfairly denied education. Determining whether a child's conduct is a manifestation of his disability is very complex. Even where school officials act with the utmost good faith, it is extremely difficult to unravel the relationship between a child's actions, his or her school experience, and his or her disability. Only more affluent families with access to legal representation and the resources to enlist psychologists, psychiatrists, and other experts are able to challenge erroneous determinations at administrative and judicial hearings. Third, contrary to those arguing in favor of cessation of

services, providing the "same" treatment for students with disabilities as other nondisabled students is really quite different treatment.

Terminating education for children with disabilities has more drastic consequences than terminating education for others. For example, students who are expelled from school without alternative education may later complete their secondary education by participating in a general equivalency diploma or other adult education program. This is not an equally viable option for students with disabilities because these programs are not required to provide the special education and related services children with disabilities need in order to receive equal educational opportunity. Children with disabilities cannot use these programs to recoup their education, as children without disabilities may do, and they may lose critical skills necessary to address the consequences of their disabilities. Fifth, ceasing educational services will increase the school drop-out rates and make it more difficult for students with disabilities to become employed. Finally, expelling children without alternative education is not in the public interest. /21/ That a child may engage in improper behavior only increases the public's interest in seeing that he or she is educated. The safety and welfare of the larger community are jeopardized if students who have been excluded from public school because of their actions are not provided appropriate alternative education to assist them in becoming productive members of society.

B. The Right to "Stay Put" and the Role of Parents

Under current law any exclusion from school of more than ten school days constitutes a "change in educational placement," which may be accomplished only through the Act's prescribed procedures. These procedures include, inter alia, providing parents written notice of the proposed action, the basis for the school's decision, other less exclusionary options considered and/or tried, and the reasons for their rejection. /22/ Responsibility for changing the student's education placement, including removal from his or her current education placement through suspension in excess of ten days, rests with the members of the child's IEP team, with parental participation, after consideration of the child's needs, evaluation data, the appropriateness of current program, placement, and placement options consistent with the student's right to be educated in the least restrictive environment.

While current law does not require parental consent before changing the placement of a disabled student who is receiving special education, parents do have a right to complain about any proposed change in their child's educational placement and/or the provision of appropriate education and to an impartial hearing. During the pendency of any proceedings concerning these matters, the student has the right to stay put or to remain in his or her current educational placement unless his or her parent and the school agree otherwise. /23/ In Honig v. Doe, when the U.S. Supreme Court addressed the apparent conflict between the statutory requirement and school disciplinary exclusions for the first time, the Court interpreted the language directing that a disabled child "shall remain in [his or her] current educational placement pending completion of any complaint or review proceeding(s) unless the parents and state or local educational agency otherwise agree as being 'unequivocal.'" /24/

The Supreme Court expressly noted, however, the U.S. Department of Education's comment to the particular regulation (34 C.F.R. Sec. 300.513) implementing Sec. 1415(e)(3), which, while acknowledging that a pupil's placement may not be changed during complaint or review proceedings, recognized that local school officials are not precluded "from using [their] normal procedures for dealing with children who are endangering themselves or others." /25/ The Court identified several such procedures, including a temporary suspension of up to ten school days because it does not change the student's educational placement but permits a "cooling-down" period in which school officials can initiate a review of the pupil's IEP and seek, if necessary, parental consent to an interim placement.

Once the inappropriate behavior/conduct is determined to be unrelated to the student's disability or to an IEP being inappropriate (e.g., failing to address behavioral management needs) or not being implemented (teacher absent, no qualified substitute implementing required program necessary for behavioral consistency), a school district can subject the student to a range of disciplinary sanctions consistent with his or her IEP, including suspension for up to ten school days. Of course, a school district can always seek to change the student's seemingly ineffective educational placement by following the procedures prescribed by the IDEA (i.e., notice to the parents, reconvening the student's IEP team, etc.).

If the school believes that maintaining the student's current placement is substantially likely to cause injury to himself, herself, or to others and the parents do not agree with the school's assessment, and/or an agreement cannot be reached between school and parents about an alternative appropriate placement (e.g., parents reject homebound 2.5 hours. per day), and the parents have filed a complaint asserting the student's right to remain in his or her current placement, then the local education agency may seek an injunction from a court of competent jurisdiction to exclude the child from his or her current education placement. /26/

Finally, the Court explicitly ruled that the language of Sec. 1415(e)(3) preempted school authorities, but not courts of competent jurisdiction, from granting appropriate relief, including injunctive relief, in appropriate circumstances. /27/ The Court emphasized that Sec. 1415(e)(3) created a presumption in favor of the child's current educational placement -- a heavy burden overcome only by school officials able to demonstrate that continuance of such placement was substantially likely to result in injury to the disabled pupil or to others. /28/ The school district must also demonstrate that it has made reasonable efforts to minimize any risk of harm through the use of supplementary aids and services, /29/and the burden on a school district seeking such an injunction is "substantial.". /30/ Consistent with the student's right to a free appropriate public education, a student may not be excluded from his or her educational placement via a Honig injunction unless alternative provision for a free appropriate public education during the period of the injunction is made. /31/

Significantly under current law it is not necessary for school officials to seek an injunction consistent with Honig under the IDEA if the student with disabilities brings a firearm to school, and such conduct is unrelated to his or her disability. If the possession of the firearm is unrelated to the student's disability, the student's IEP team may place him or her in an alternative interim educational placement, in accordance with state law for up to 45 calendar days -- even over parental objection.

If the student’s conduct in bringing the firearm to school is related to his or her disability (e.g., a child with a severe cognitive disability is given a firearm to bring into school by other students who think he or she will not be discovered), and school officials believe the student is dangerous and needs to be excluded from his current educational placement, the school district may, if the parents do not concur, seek a court order to change the placement. In such a case, the 45-day alternative interim placement exception will not apply.

IV. The 104th Congress Proposed Legislation Regarding Disciplinary Exclusions

A. Eliminated "Zero Reject" and the Right to a Free Appropriate Public Education

The 1996 bills to amend the IDEA, namely, H.R. 3268 and S. 1578, allowed school officials to expel and cease providing a free appropriate public education to a student with a disability who possesses a "dangerous weapon" /32/or possesses, sells, or distributes "illegal drugs" and who cannot demonstrate that a relationship exists between his or her disability and behavior. All education, including specialized instruction and related services, could lawfully be terminated despite data about the levels of youth violence in communities, increases in the number of children, particularly poor and minority youth who are involved in gang activities, higher rates of dropout, unemployment, and incarceration for students with disabilities, and the implication of having time limits on welfare.

Both the House and the Senate bills authorized school officials to cease providing a free appropriate public education to a student with a disability who is unable to demonstrate that his or her action was a manifestation of his or her disability when a nondisabled student may, under the school’s discipline policy, be denied education for such action. Children from low-income families, who do not have fiscal resources or insurance coverage to purchase the services and consequently the testimony of a psychiatrist, psychologist, or other expert to consider whether their unacceptable behavior related to their disability, would be placed at a distinct disadvantage. Because higher percentages of minority children live in families below the poverty level, by implication the denial of educational services would have a predictable, disparate impact. Racial data already attest to disproportionately high rates of suspension and expulsion among minority students as compared to their percentage of the school population. /
33/

The mechanism proposed for determining the existence of a "nexus" also warrants scrutiny. How fair is a system when the decision-making body is the IEP team consisting of school personnel and "other qualified personnel" hired by the local educational agency, when the majority of the IEP team members are individuals who are employees or are consultants hired by the LEA? How adequate a protection is it that children, who are found not to be able to demonstrate a nexus, would, as proposed by the House bill, be provided an independent hearing before their right to a free appropriate public education is eliminated? Unless these same students are given an independent evaluation at public expense, who, do we imagine, has the resources to hire

psychologists and psychiatrists to determine whether a nexus exists and to testify before the independent hearing officer when the stakes are so high?

B. Eliminated Right to "Stay Put" and Undermined "Parents as Partners"

The bills that emerged from the 104th Congress eliminated the right of students with disabilities to stay put in their current educational placement when their parents disagree with the school's proposed "change in placement." By authorizing school personnel to change unilaterally children's education placements over the objections of their parents, this Congress was prepared to reject the more than 20-year history of parents as partners in the development and implementation of their children's educational program and placement.

As significantly, H.R. 3268 and S. 1578, if enacted as proposed, would have changed the "substantial" burden of proof that is currently required for school districts to remove a child from his or her current placement against the will of the parent. /34/ As noted above, current law requires school officials to demonstrate that the child's continued placement is "substantially likely to result in injury either to himself, herself, or to others" before a court will temporarily remove a child from his or her current educational placement over a parent's objection. /35/ The school district must also demonstrate that it has made reasonable efforts to minimize any risk of harm through the use of supplementary aids and services. /36/ The proposed legislation placed the burden on the parent to prove that the child's behavior was a manifestation of the child's disability in order to stay put during the pendency of any proceedings challenging a proposed change in the child's educational placement with which the parent disagreed.

Proposed H.R. 3268 and S. 1578 also authorized school personnel to change unilaterally the educational placement of a child over the objection of the parent when an IEP team determined that the child was engaging in a "pattern of behavior that significantly impairs the education of the child or the education of the child's classmates and the ability of the teacher to teach." /37/ In this instance, instead of the child staying put during the pendency of any proceedings being resolved, a hearing officer's determination of placement would become the child's placement during any further appeal or review by a court of competent jurisdiction. Both the Senate and House bills further authorized school officials to override parental objection and thus deny stay-put protection to students who allegedly engaged in "seriously disruptive behavior," caused serious injury, were in possession of a weapon, or possessed, sold, or distributed illegal drugs. School officials were authorized to remove these students unilaterally to an "interim alternative placement" despite the objections of their parents.

C. Denied Rights of and Responsibility for Unidentified Students

Despite the affirmative duty of school districts to locate, identify, and evaluate all students with disabilities /38/ both H.R. 3268 and S. 1578 denied all procedural protection, including stay-put rights, to students who have not yet been identified as having a disability and who have requested an evaluation unless the school district had prior knowledge of the child's disability. The proposed provision exonerates local educational agencies from any accountability unless the child's parent

has expressed their sense of concern in writing (unless the parent is illiterate or has a disability that prevents the parent from complying with this requirement). This provision is as illogical as it is offensive to parents. Who has the duty to identify, locate, and evaluate children with disabilities? Who is supposed to be knowledgeable about "special education"? How are the parents supposed to know about a requirement in the IDEA to express any concerns about their child in writing when the child has not yet been identified as a child with a disability in need of special education and the parents presumably have not been given full information about their rights under the Act?

Furthermore, by denying the IDEA's protection to unidentified students who request an evaluation, the legislation proposed by the 104th Congress would have rewarded schools for breaching their affirmative duty to locate, identify, and evaluate, and punished the students who would have been denied appropriate educational services as a result. In allowing schools to discipline previously unidentified children with disabilities by withholding all education (i.e., denying a free appropriate public education), the House and Senate bills reward violations of the IDEA and create an enormous disincentive for prompt identification and evaluation.

It makes little sense to create a loophole in the statute to bar children not previously determined to have a disability from seeking an evaluation and, thereby, come within the protection of the statute while a determination of their eligibility and any appeal thereof are pending. /39/ The purpose underlying this Act was to ensure that all students with disabilities are provided a free appropriate public education. The Act itself includes, as a basis for eligibility, disabling conditions that manifest themselves through inappropriate or challenging behaviors that may require the student to seek specialized instruction, including such supportive services as psychological counseling, behavior modification, or behavioral management. Many state statutes and regulations include disciplinary suspensions as a criteria for referral for evaluation of a student's possible need to receive special education. The Office for Civil Rights and the Office for Special Education Programs of the U.S. Department of Education have issued letters of finding that local school districts have failed to meet their childfind obligations to identify, locate, and evaluate all children with disabilities in need of special education on the basis of districts' failure to respond to multiple disciplinary sanctions, manifestations of inappropriate behaviors, and evidence of social and emotional difficulties interfering with a student's ability to benefit from his or her education program. /40/

Throughout this concerted effort to eliminate students' rights under the IDEA, there has been a sustained chorus of outrage about students who have not previously been identified as having a disability but who, upon getting involved in some incident warranting suspension or, more likely, expulsion, attempt to manipulate the system by requesting an evaluation for eligibility for special education programs and services. Where is the outcry for the thousands of children who were not identified and referred for evaluation by their local school districts, who were never identified as having disabilities, never provided specialized instruction and support services that would have helped them learn and be successful? Indeed, Congress found in 1990 that "children with serious emotional disturbance remain the most underserved population of students with disabilities." /41/ Fewer than one-half of this nation's children with serious emotional disabilities are being identified and provided special education. Again, it will come as no surprise that no data were collected to support the level of abuse and manipulation being alleged by those who would deny children protection and special education.

On the other hand, data about the students with disabilities who are not successfully served are substantial. Already 50 percent of students identified as seriously emotionally disturbed drop out of school before they graduate, 20 percent are arrested at least once before leaving school, and 35 percent within a few years of leaving school; /42/ Generally, about 38 percent of all students with disabilities drop out of school before graduation, and drop out with fewer than ten credits. Students with disabilities from low-income families and from minority groups are at greater risk of dropping out of school, and, in addition, students with serious emotional disturbances, students with mental retardation, learning disabilities, other health impairments, or speech impairments drop out in significant numbers (23 -- 30 percent). /43/ Students with disabilities compared to students without disabilities have a significantly greater likelihood of being on welfare and having difficulty finding and maintaining a job. Finally, there can be little doubt but that students with disabilities left at home without provision of specialized instruction and related services will become further victimized. Denying them necessary educational skills and services is hardly consistent with Goals 2000 of the Educate America Act /44/or even welfare reform initiatives to the degree the proposed changes seek to help people move from dependency to a heightened level of self-sufficiency.

V. Part B of the Individuals with Disabilities Education Act Is Permanently Authorized and Should Not Be Modified

The decision to open Part B of the IDEA for reauthorization is a political decision. The rights of all students with disabilities are at issue, and, as evidenced by the changes proposed by the 104th Congress through H.R. 3268 and S. 1578, they are extremely vulnerable. Despite a dearth of factual data supporting a need for revising the statute, the very tenets of the IDEA were openly and vigorously challenged. Legislation that undermined the basic principles of the Act nearly passed, as concessions and compromises were made that would have denied all students with disabilities the right to receive a free appropriate public education and the right to stay put -- to prevent school officials from unilaterally removing students with disabilities from their current educational placements.

Part B was permanently authorized by a Congress that had both vision and uncompromising principles. Now is not the time to retreat from our goal of an integrated and inclusive public education system in which all students are expected to attain and have the opportunity to attain high-quality educational outcomes. Rather, we should be moving forward to ensure that students with disabilities are fully integrated into the regular education curriculum with such support and assistance as will enable them to attain the same high standards and educational outcomes expected for all students. Rights basic to the IDEA have not been adequately or successfully implemented for all students, particularly minority and low-income students with disabilities. The rights that are being challenged are critical to all students with disabilities being able to succeed. No student is expendable -- not even a student who is in possession of a weapon or illegal drugs. A public policy that denies education to any student is irrational.

The effect of denying students with disabilities appropriate education is documented through higher dropout rates, unemployment, dependency, and incarceration. The rights at stake belong to students

with disabilities, and they should not be political fodder to be negotiated by groups with very different agenda.

Despite the rhetoric and reckless anecdotes that flooded the 104th Congress about discipline of students with disabilities, factual data do not support a need to eliminate the rights of students with disabilities under Part B of the IDEA. Furthermore, as has been discussed above, school officials have sufficient authority under the Act to remove any student with a disability who is substantially likely to cause injury to himself, herself, or others.

The case has not been met for amending the substantive and procedural provisions of the IDEA as targeted by the educational community for purposes of giving school personnel greater control and authority unilaterally to remove students with disabilities who have been increasingly integrated in their public school programs.

Footnotes

/1/ 20 U.S.C. Secs. 1400 et seq.

/2/ 20 U.S.C. Sec. 1411(h), as amended by Pub. L. 99-457, Sec. 201(b)(3). Part A includes, inter alia, the purpose and findings of the Act, definitions, authority for the Office of Special Education Programs, regulatory provisions, and eligibility and administrative provisions applicable to the discretionary programs authorized in section 618 of Part B and Parts C through G. Part B authorizes two formula grant programs, namely, the Assistance to States for the Education of Students with Disabilities, which assists states in providing special education and related services to students with disabilities from age 3 through 21, and the Preschool Grants for Children with Disabilities, which provides states with additional funds to provide appropriate services to children with disabilities who are from 3 though 5 years of age. Parts C through G authorize a variety of discretionary activities relating to research, technical assistance, demonstration projects, training, and dissemination. Part H authorizes the Grants for Infants and Toddlers with Disabilities program, which provides states with federal funds to assist in offering early intervention services through a comprehensive state service system.

/3/ H.R.3268 and S.1578, 104th Cong. 2d Sess. (1996).

/4/ A manager’s package refers to a package of amendments put together by the respective chairs of the appropriate committees and subcommittees in the House and Senate in an attempt to reach agreements so as to bypass the usual role of the conference committee in order to get the legislation before the full Congress for a vote.

/5/ 20 U.S.C. Secs. 1400(c); 1412(1), (2)(A), (B), (C), (3), 1414(a)(1)(C); see, e.g., Timothy W. Rochester School District, 875 F.2d 954, 960 (1st Cir. 1989) ("The language of the Act could not be more unequivocal. . . . The language of the Act in its entirety makes clear that a 'zero-reject’ policy is at the core of the Act . . . ").

/6/ 20 U.S.C. Sec. 1415(e)(3).

/7/ Honig v. Doe, 484 U.S. 305, 309 -- 11 (1988) (Clearinghouse No. 42,583).

/8/ Id. at 323, 328.

/9/ Id. at 327 -- 28

/10/ 20 U.S.C. Secs. 1401(a)(1), 1412(1), (2)(B),(C), 1414(a).

/11/ Id. Sec. 1401(a)(18).

/12/ Id. Sec. 1401(a)(20).

/13/ Id. Sec. 1401(a)(18), 1412(1), 1414(a).

/14/ Honig, 484 U.S. at 325; Commonwealth of Va., Dep't of Educ. v. Riley, 86 F.3d 1337, 1344 -- 45 (4th Cir. 1996).

/15/ 20 U.S.C. Sec. 1412(5)(B).

/16/ Honig, 484 U.S. at 325; Commonwealth of Va., 86 F.3d at 1343 -- 45.

/17/ Chris D. v. Montgomery Bd. of Educ., 753 F. Supp. 922 (M.D. Ala. 1990)(school district failed to provide free and appropriate public education to a student with emotionally disturbed behaviors who was subjected to numerous disciplinary sanctions; rather than employing strategies to teach him appropriate behavior that would enable him to return to the regular education environment, the individualized education plan recited classroom rules, rewards, and punishments); Stuart v. Nappi, 443 F. Supp. 1235, 121 (D. Conn. 1978)(school's "handling of the plaintiff may have contributed to her disruptive behavior"); Lamont X. v. Quisenberry, 606 F. Supp. 809, 813 n.2 (S.D. Ohio 1984) ("we cannot help but be troubled by the decision to prosecute the minor plaintiffs . . . particularly when the prosecution was combined with removal from the classroom for several months. Plaintiffs' handicap by definition includes a likelihood for behavioral disturbances, and the fact that defendants chose criminal prosecution as an appropriate response to such behavior leads us to question whether the school may have simply decided that it was time to take harsh action in such instances as a policy matter, a result which we do not perceive as wholly in keeping with the spirit and purpose of the [IDEA])").

/18/ 20 U.S.C. Secs. 1401(a)(16) -- (18), 1412(1),1414(a).

/19/ Id. Sec. 1413(a)(3), (14).

/20/ See id. Sec. 1413(a)(3)(B); see also Timothy W. v. Rochester Sch. Dist., 875 F.2d 954, 973 (1st Cir. 1989), cert. denied 110 S. Ct. 519 (Clearinghouse No. 44,667) ("educational methods...are not static, but are constantly evolving and improving. It is the school district's responsibility to

avail itself of these new approaches in providing an education program geared to each child's individual needs").

/21/ This list of concerns was prepared by Eileen Ordover, Center for Law and Education, June 1996.

/22/ 20 U.S.C. Sec. 1415(b)(1)(C) -- (D); 34 C.F.R. Secs. 300.504(1),(b)(1)(ii), 104.36.

/23/ 20 U.S.C Sec. 1415(e)(3); 34 C.F.R. Sec. 300.513.

/24/ Honig, 484 U.S. at 323 (emphasis added).

/25/ Id. at 325.

/26/ A court of competent jurisdiction is a federal district court or proper state trial court but not a juvenile court that is not otherwise authorized to hear appeals of special education complaints under 20 U.S.C Sec. 1415(e)(2).

/27/ Honig, 484 U.S. at 328.

/28/ Id.

/29/ Light v. Parkway C-2 Sch. Dist., 41 F.3d 1223 (8th Cir. 1994).

/30/ Honig, 484 U.S. at 428.

/31/ See, e.g., Texas Independent Sch. Dist. v. Jorstad, 752 F. Supp. 231 (S.D. Tex. 1990).

/32/ S. 1578 defined "dangerous weapon" as "a weapon, device, instrument, material or substance, animate or inanimate, that is used for or is readily capable of causing death or serious bodily injury."

/33/ National data from the 1990 Elementary and Secondary School Civil Rights Survey collected by the Office of Civil Rights of the U.S. Department of Education indicated that African American students are disproportionately excluded from school for disciplinary reasons: 32 percent of all students suspended were African American, who comprise only 16 percent of total school enrollment nationally. Racial disproportion in school suspension exists in all geographic regions, including, e.g., Alabama (36 percent of enrollment African American, 57 percent of suspended students African American); Maryland (35 percent, 53 percent); New Hampshire (1 percent, 3 percent); New Jersey (24 percent, 37 percent); Ohio (27 percent, 48 percent); Oklahoma (17 percent, 41 percent); Pennsylvania (22 percent, 52 percent); Tennessee (30 percent, 51 percent); Washington State (6 percent, 13 percent).

/34/ Honig, 484 U.S. at 328.

/35/ Id.

/36/ Light, 41 F.3d at 1223.

/37/ H.R. 3268, Sec. 614(d)(3)(B)(i), (f)(1), (4)(D); S. 1578, Sec. 615(d)(1)(A).

/38/ 20 U.S.C. Secs. 1412(2)(c), 1414(a)(1)(A); 34 C.F.R. Sec. 300.128, 300.220.

/39/ 20 U.S.C. Sec. 1415(e)(3). See Hacienda La Puente Unified Sch. Dist. of Los Angeles v. Honig, 976 F.2d 487 (9th Cir. 1992); cf. Rodiriecus L. v. Waukegan Sch. Dist No. 60, 90 F.3d 249 (7th Cir. 1996) (Clearinghouse No. 50,718), rev'g (on policy grounds and without legal analysis) 889 F. Supp. 1045 (N.D. Ill. 1995).

/40/ See, e.g., Mineral County (NV) School District, 16 Education for the Handicapped Law Reporter [EHLR] 668 (U.S. Dep't. of Educ., Office of Civil Rights, 3-16-90, enforcing 29 U.S.C. 794); Inquiry of Fields, EHLR 211:437 (U.S. Dep't of Educ., Office of Special Educ. Programs [OSEP] 1987) (OSEP "would encourage States and localities to be alert to the possibility that repeated discipline problems may indicate that the services being provided to a particular child with a [disability] should be reviewed or changed").

/41/ H.R. Rep. No. 544, 101st Cong., 2d Sess. (1990) at 39.

/42/ U.S. Dep't of Educ., Sixteenth Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act 109 -- 10 (1994).

/43/ Id. at 15 -- 19, 114.

/44/ 20 U.S.C. Secs. 5801 et seq.