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The Individuals with Disabilities Education Act: Discipline Legislation in the 106th Congress

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Summary

Although Congress described its 1997 changes to discipline provisions in the Individuals with Disabilities Education Act (IDEA) as a “careful balance,” it was not long before amendments to change the provisions surfaced. In 1999 the Senate passed S. 254, 106th Cong., the Violent and Repeat Juvenile Accountability and Rehabilitation Act of 1999, and the House passed H.R. 1501, 106th Cong., the Child Safety and Protection Act, both of which contained amendments to IDEA. These amendments would have changed section 615 of IDEA to eliminate IDEA’s different disciplinary procedures for children with disabilities in certain situations. In the Senate the amendment applied to children with disabilities who carry a gun or firearm while in the House the amendment would cover a weapon. These amendments were not enacted.

Two amendments relating to children with disabilities were offered and accepted during House Education and Workforce Committee markup of H.R. 4141, 106th Cong., the Elementary and Secondary Education Act Amendments. One amendment, offered by Representative Norwood, concerned the discipline of a child with a disability who carries or possesses a weapon. The other amendment, offered by Representatives Talent, McIntosh and Tancredo, concerned the discipline of a child with a disability who knowingly possesses or uses illegal drugs at school or commits an aggravated assault or battery at school. These amendments were not enacted.

This report will be updated as appropriate. For a more detailed discussion of the due process provisions in IDEA see CRS Report 98-42, *Individuals with Disabilities Education Act: Discipline Provisions in P.L. 105-17*, by Nancy Lee Jones.

Background and Current Statutory Language Relating to Discipline

IDEA provides federal funds to the states to assist them in providing an education for children with disabilities. As a condition for the receipt of these funds, IDEA contains requirements on the provision of services and detailed due process procedures. In 1997 Congress amended IDEA in the most comprehensive and controversial reauthorization

since IDEA's original enactment in 1975. One of the most contentious issues addressed in the 1997 legislation related to the disciplinary procedures applicable to children with disabilities.

IDEA was originally enacted in 1975 because children with disabilities often failed to receive an education or received an inappropriate education. This lack of education led to numerous judicial decisions, including *PARC v. State of Pennsylvania*¹ and *Mills v. Board of Education of the District of Columbia*² which found constitutional infirmities with the lack of education for children with disabilities when the states were providing education for children without disabilities. As a result, the states were under considerable pressure to provide such services and they lobbied Congress to assist them.³ Congress responded with the grant program still contained in IDEA but also delineated specific requirements that the states must follow in order to receive these federal funds. The statute provided that if there was a dispute between the school and the parents of the child with a disability, the child must "stay put" in his or her current educational placement until the dispute is resolved. A revised stay put provision remains in IDEA.

Issues relating to children with disabilities who exhibit violent or inappropriate behavior have been raised for years and in 1988 the question of whether there was an implied exception to the stay put provision was presented to the Supreme Court in *Honig v. Doe*.⁴ Although the Supreme Court did not find such an implied exception, it did find that a ten day suspension was allowable and that schools could seek judicial relief when the parents of a truly dangerous child refuse to permit a change in placement. In 1994, Congress amended IDEA's stay put provision to give schools unilateral authority to remove a child with a disability to an interim alternative educational setting if the child was determined to have brought a firearm to school.

In 1997 Congress made significant changes to IDEA in P.L. 105-17 and attempted to strike "a careful balance between the LEA's (local education agency) duty to ensure that school environments are safe and conducive to learning for all children, including children with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education."⁵ This current law does not immunize a child with a disability from disciplinary procedures but these procedures may not be identical to those for children without disabilities. In brief, if a child with a disability commits an action that would be subject to discipline, school personnel have the following options:

- ! suspending the child for up to ten days with no educational services provided,

¹ 343 F. Supp. 279 (E.D.Pa. 1972).

² 348 F. Supp. 866 (D.D.C. 1972).

³ For a detailed discussion of the intent behind the enactment of P.L. 94-142 see CRS Report 95-669, *The Individuals with Disabilities Education Act: Congressional Intent*, by Nancy Lee Jones.

⁴ 484 U.S. 305 (1988).

⁵ S.Rept. 105-17, 105th Cong., 1st Sess. 28 (1997); H.Rept. 105-95, 105th Cong., 1st Sess. 108 (1997).

- ! conducting a manifestation determination review to determine whether there is a link between the child's disability and the misbehavior. If the child's behavior is not a manifestation of a disability, long term disciplinary action such as expulsion may occur, except that educational services may not cease. If the child's behavior is a manifestation of the child's disability, the school may review the child's placement and, if appropriate, initiate a change in placement.
- ! placing the child in an interim alternative education setting for up to forty five days (which can be renewed) for situations involving weapons or drugs, and
- ! asking a hearing officer to order a child be placed in an interim alternative educational setting for up to forty-five days (which can be renewed) if it is demonstrated that the child is substantially likely to injure himself or others in his current placement.

School officials may also seek a *Honig* injunction as discussed previously if they are unable to reach agreement with a student's parents and they feel that the new statutory provisions are not sufficient.⁶

IDEA Amendments in the Violent and Repeat Juvenile Accountability and Rehabilitation Act of 1999

Violence in schools surfaced on the congressional agenda in the 106th Congress with S. 254, the Violent and Repeat Juvenile Accountability and Rehabilitation Act of 1999 which passed the Senate on May 20, 1999, and H.R. 1501, the Child Safety and Protection Act which passed the House on June 17, 1999. Both of these bills contained amendments offered on the floor relating to discipline under IDEA. Essentially these amendments would have changed section 615 of IDEA to eliminate IDEA's different disciplinary procedures for children with disabilities in certain situations. In the Senate the amendment applied to children with disabilities who carry or possess a gun or firearm while in the House the amendment would have covered a weapon. The Senate passed Amendment 355, offered by Senators Frist and Ashcroft, by a vote of 74 to 25.⁷ The House passed Amendment 35, offered by Representative Norwood, by a vote of 300 to 128.⁸ The legislation was not enacted.

These House and Senate amendments were the subject of emotional debate. The general theme sounded by proponents of the amendments was that recent incidents of gun violence in the schools necessitated the changes in IDEA to allow school officials more control over discipline. The opponents of the amendments argued that the discipline provisions in IDEA had been carefully crafted in the 1997 reauthorization and that the

⁶ For a more detailed discussion of these provisions see CRS Report 98-42, *Individuals with Disabilities Education Act: Discipline Provisions in P.L. 105-17*, by Nancy Lee Jones.

⁷ 145 C.R. S5691 (May 20, 1999).

⁸ 145 C.R. H4532 (June 17, 1999).

result of the amendments would be more criminal behavior by depriving children with disabilities who had possessed weapons of supervision and educational services.⁹

House Amendments Concerning Children with Disabilities in the ESEA Legislation

Two amendments relating to children with disabilities were offered and accepted during House Education and Workforce Committee markup of H.R. 4141, 106th Cong. One amendment, offered by Representative Norwood, concerned the discipline of a child with a disability who carries or possesses a weapon. The other amendment, offered by Representatives Talent, McIntosh and Tancredo, concerned the discipline of a child with a disability who knowingly possesses or uses illegal drugs at school or commits an aggravated assault or battery at school.

The amendment offered by Rep. Norwood required that each state that receives funds under the Act shall require each local educational agency to have in effect a policy which would allow school personnel to discipline a child with a disability who carries or possesses a weapon at school in the same manner in which school personnel may discipline a child without a disability. This would have included expulsion or suspension and a child who is suspended or expelled would not have been entitled to continue educational services, including the provision of a free appropriate public education (FAPE), if the state does not require a child without a disability to receive educational services after being expelled or suspended. However, a local educational agency may have chosen to provide educational or mental health services for such a child. If such services are provided, there was no requirement to provide the child with any particular level of service and the location of the services is at the discretion of the local educational agency. School personnel were permitted to modify the disciplinary action on a case by case basis.

A child with a disability who is disciplined under this amendment would have been able to assert a defense that the carrying or possession of the weapon was unintentional or innocent. This provision could have helped to address the problem of a child with limited mental capacities who had someone place a gun in his or her backpack; however, the exact implications of this provision are somewhat uncertain since it was not specified to whom or when this defense would be asserted.

The term weapon was defined as having the meaning given to “dangerous weapon” at 18 U.S.C. §930(g)(2). That definition stated: “The term ‘dangerous weapon’ means 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, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.”

The amendment offered by Representatives Talent, McIntosh and Tancredo required that each state that receives funds under the Act shall require each local educational agency to have in effect a policy under which school personnel may discipline a child with a disability in the same manner as a child without a disability if the child with

⁹ For a more detailed discussion of these proposed amendments and the surrounding debate see CRS Report RS20309, *Individuals with Disabilities Education Act: House and Senate Amendments to Juvenile Justice Legislation*, by Nancy Lee Jones.

a disability (1) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance at a school, on school premises, or to or at a school function or (2) commits an aggravated assault or battery, as defined under State or local law, at a school, on school premises, or to or at a school function. Like the amendment offered by Representative Norwood, this amendment would have included expulsion or suspension and a child who is suspended or expelled would not have been entitled to continue educational services, including FAPE, if the state does not require a child without a disability to receive educational services after being expelled or suspended. However, a local educational agency may have chosen to provide educational or mental health services for such a child. If such services are provided, there was no requirement to provide the child with any particular level of service and the location of the services was at the discretion of the local educational agency. School personnel were permitted to modify the disciplinary action on a case by case basis.

As with the Norwood amendment, a child with a disability who is disciplined under this amendment would have been able to assert a defense that the possession or use of the illegal drugs, or the sale or solicitations of the controlled substance, was unintentional or innocent. This provision could have helped to address the problem of someone placing drugs in the backpack of a child with limited mental capacities; however, the exact implications of this provision were somewhat uncertain since it was not specified to whom or when this defense would be asserted. The amendment did not provide for any similar defense for an allegation of aggravated assault or battery.

The definition of controlled substance was the same as the definition in section 4141 of H.R. 4141. This section states that the term controlled substance “means a drug or other substance identified under Schedule I, II, III, or IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. §812(c)).” Illegal drug “means a controlled substance, but does not include such a substance that is being legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.”

These amendments were not enacted.