

**School Discipline and Educationally Disabled Students**

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*Abstract*

This paper examines the history and evolution of school discipline for educationally disabled students. It reviews the Education of All Handicapped Children Act (EAHCA), subsequent case law, acts of Congress, and the amendments to the Individuals with Disabilities Education Act (IDEA) in 1997. It discusses the practical implications of the amendments for schools. Finally, it summarizes the changes in the disciplinary provisions due to the Individuals with Disabilities Education Improvement Act (IDEIA) 2004.

## *Introduction*

The discipline of special education students has been controversial since the establishment of the Education for All Handicapped Children Act (EAHCA). The EAHCA, enacted by Congress in 1975, was established to ensure the educational rights of students with disabilities; however, it did not address issues related to discipline. Over the years, the EAHCA was amended several times and in 1990 the law was renamed the Individuals with Disabilities Education Act (IDEA) (Osborne, 2001). This Act contains six major principles that affect the discipline of disabled students. The “Zero Reject” rule provides a free and appropriate education to all students with disabilities and prohibits the cessation of the disabled student’s right to an education. The second principle, “nondiscriminatory evaluation”, states that a student must be fairly evaluated in order to determine if they have a disability and what special education and/or related services are necessary for the student in the school setting. The third principle is “appropriate education”. The Individualized Education Plan (IEP) provides the framework for individualized special education and related services for disabled students. The “least restrictive environment” (LRE), the fourth principle, states that disabled students should be educated with nondisabled students in the general curriculum to the maximum extent possible. The fifth principle is the right to procedural safeguards. The final principle is that the parent and student should be involved in shared decision making with the school on issues related to educational programming (Turnbull, Wilcox, Turnbull, Sailor & Wickham, 2001).

The courts have held that the provisions of the IDEA prohibit school districts from disciplining students with disabilities for behavior that is related to their disabilities. While IDEA’s disciplinary restrictions can sometimes infringe upon the rights of all students, school administrators must adhere to the guidelines established by case law. Based upon these cases, school administrators are faced with the difficult issue of imposing a double standard of discipline for disabled students (Proffitt-Dupre, 2000).

### *Case Law and Congress*

Since the EAHCA did not specifically address how to deal with disabled students who were disrupting the learning environment; the subsequent court cases played a significant role in Congress' development of IDEA 1997. These decisions have impacted the practical application of discipline for disabled students in schools. Since the mid-seventies, court cases have addressed suspension, expulsion, procedural safeguards, manifestation determinations, and changes in placement. These cases, generally involving the suspension and expulsion of educationally disabled students, have led to the dual system of discipline which currently exists.

In 1975, the U.S. Supreme Court ruled that students have the right to procedural due process when they are being removed from school. Students are entitled to verbal or written notice of the charges against them, an explanation of the charges and evidence supporting them, and a hearing prior to a period of suspension for suspensions of ten days or less. This gives students an opportunity to present their side of the story. Suspensions for longer periods of time may require more formalized procedures (*Goss v. Lopez*, 1975).

In *Doe v. Koger* (1979) the courts held that before schools could expel disabled students for disciplinary reasons, they must conduct a manifestation determination to carefully determine if the student's behavior is related to his disability. Conversely, if the student's behavior was not a manifestation of his disability, he may be expelled. The court determined that schools could immediately suspend disabled students for less than ten days. They also held that the suspension and expulsion of disabled students equates to a change in placement for disabled students.

Since expulsion is a change in placement that requires procedural protections, schools may not expel disabled students without providing an appropriate alternative program (*Stuart v. Nappi*, 1978). In a similar ruling to *Doe v. Koger* (1979), the burden of determining if a causal relationship exists between the student's disability and his behavior was placed upon the schools. The court ruled that a multidisciplinary team must make that determination prior to an

expulsion hearing as this type of a removal from school is considered a change in placement. If the student's behavior is not a manifestation of his disability, he may be expelled in accordance with the IDEA provisions. Educationally disabled students may be expelled for conduct unrelated to their disability; however, special education services cannot be terminated (*S-1 v. Turlington*, 1981). This ruling was further upheld in the *Kaelin v. Grubbs* (1982) case. In this case, a mentally retarded student was suspended for 31 days and expelled for "defying authority" and hitting a teacher. The student's due process rights were denied. The court restated that expulsion is a change in placement, a student may not be expelled if his conduct is a manifestation of his disability, students have due process rights, and that disabled students may be expelled if proper procedures are used (*Kaelin v. Grubbs*, 1982). In 1984, the court held that long-term suspensions, even when home instruction is provided, constitute a change in placement (*Lamont X. v. Quisenberry*, 1984).

In *Honig v. Doe* (1988), the U.S. Supreme Court held that a suspension for more than ten days is equivalent to a change in placement and triggers the procedural protections of IDEA. Suspensions for less than ten days are not changes in placement and do not trigger the procedural safeguards. The case also called attention to the "stay put" provision of IDEA that asserts that students remain in their current educational placements during associated proceedings. The court held that immediate changes in placement may only occur if the parent agrees. For students who are considered "truly dangerous" or when maintaining the current placement is "substantially likely to result in injury either to the student or others", schools may seek an injunction from the courts to exclude the student from the attending school. The court also noted that disciplinary procedures such as the use of study carrels, detention, time out and restricting privileges can be used with special education students. This decision created a separate disciplinary standard for disabled students. It created an environment where the parents of nondisabled students felt that their children's education was jeopardized, and although it provided guidance on the stay put provision for dangerous disabled students, it did

not address many other aspects of discipline. The ruling did not provide clarification regarding whether a change in placement occurs when a student is suspended for ten consecutive days or ten cumulative days (Zykorie, 2003).

Since *Honig v. Doe* (1988), students who have not been previously identified as being disabled under the IDEA may also be afforded the procedural safeguards of the IDEA. The courts have held that if a nondisabled student engages in misconduct and is subject to expulsion, he is able to request an evaluation to determine if he is eligible for special education services. In essence, he may invoke the procedural protections of IDEA to “forestall attempts at routine discipline” (*Hacienda La Puente School District v. Honig*, 1992). They also held that the stay put provision should apply when the school district “knew or should have known” that the student had a disability (*Rodriguez v. Waukegan School District #60*, 1996).

In the mid-nineties, Congress passed the Gun-Free School Act (1994) which mandated that school districts must have a policy that students who bring a firearm to school must be expelled for at least one year. This created difficulties for disabled students who violated this Act due to the “stay put” provision of IDEA. A few months after this Act was passed, Congress enacted the Jeffords Amendment to Improving America’s Schools Act (1994). This allowed schools to place disabled students in interim alternative settings for up to forty-five days, limiting IDEA’s stay put provision. If a parent invoked their due process rights, and the subsequent proceedings lasted more than the forty-five days, the student would remain in the interim alternative setting.

#### *IDEA Amendments 1997*

In consideration of the case law history and the Congressional Acts, Congress attempted to fully address discipline issues for disabled students in the IDEA Amendments of 1997. “Congress also wanted to protect the educational rights of students with disabilities without imposing excessively burdensome requirements on schools” (Hartwig & Ruesch, 2000, p.240). According to the Office of Special Education Programs guidance memorandum (OSEP

97-7), the goals of the disciplinary provisions of IDEA asserted that all students deserve safe, well-disciplined schools and orderly learning environments. The goals of the IDEA are that schools should have the tools to assist them in preventing misconduct and discipline problems as well as the tools to address those problems. The provisions will provide a balanced approach to disciplining disabled students that ensures their right to a free appropriate education. Additionally they ensure the student's right to an appropriately developed IEP, including behavioral interventions.

Some of the disciplinary provisions of the IDEA 1997 codified existing case law, clarified some gray areas and settled some disagreements that had previously split the courts (Osborne, 2001). These amendments addressed functional behavioral assessments (FBA), behavior intervention plans (BIP), manifestation doctrine, special education services during periods of expulsion, injunctions to exclude dangerous students from school, short term suspensions, transfers to other settings for disciplinary reasons, and the rights of students not yet identified as disabled (Osborne, 2001).

The law called for the use of positive behavioral interventions and supports in schools to address inappropriate behavior (Turnbull et al., 2001). The amendments required schools to conduct FBA's and implement BIP's for students exhibiting behavioral difficulties. They provided little guidance as to what constituted an FBA or a BIP (Osborne, 2001). This course of action is required when students are removed from school for more than ten days or if the student is subject to a disciplinary change in placement. If an FBA/BIP already exists, it must be reviewed and updated if necessary, in subsequent removals (Zykorie, 2003).

The procedures for conducting a manifestation determination were also present in the IDEA. The IDEA stated that a multidisciplinary team would consider all evaluations, diagnostic information, the student's Individualized Education Plan (IEP) and placement, and any other pertinent information when deciding if the student's behavior was a manifestation of his disability. The team must determine if the student's disability impaired his ability to understand

the impact and consequences his conduct and if the disability impaired his ability to control his behavior. If the team determines that the misconduct is not a manifestation of the disability the student may be subjected to regular disciplinary action, however, the school must continue to provide a free and appropriate education. The team must also assess if the student's IEP and placement were appropriate and that all services were provided in accordance with the IEP at the time of the misconduct. If there were any problems in this regard, the behavior must be considered a manifestation of the disability. Parents who disagree with the determinations of the multidisciplinary team may file for an expedited hearing (Osborne, 2001; Zykorie, 2003).

The IDEA amendments clarified that special education services must be continued during a period of expulsion (Osborne, 2001). A school district may also request an expedited hearing when dealing with a dangerous student. It also gave hearing officers the authority to change a student's placement to an appropriate Interim Alternative Educational Setting (IAES) for up to forty-five days when the student was substantially likely to injure himself or others if he remained in his current placement. This provided school districts with an additional option of getting a court injunction to remove a dangerous student from his current placement (Osborne, 2001).

The IDEA 1997 gave schools the authority to suspend disabled students for up to ten days as long as similar discipline would be imposed upon a non-disabled student. In these situations an FBA must be conducted and a BIP created to address the student's misconduct. Generally, suspensions in excess of ten consecutive days and expulsions are considered long-term suspensions (Yell et al, 2001). When a special education student is suspended for more than ten days, parents must be notified of the long-term removal and provided with a copy of their due process rights. A manifestation determination meeting must be held by the multidisciplinary team. If the student's action is a manifestation of his disability, no discipline may be employed. If it is not, the student is subject to regular disciplinary procedures but may not be denied educational services (Zykorie, 2003). It is interesting to note that the IDEA does

not impose absolute limits to the number of days a student may be removed from his current placement (Hartwig & Ruesch, 2000).

The regulations further stated that a series of removals which cumulatively exceed ten days must be considered a change in placement. Additionally, the IDEA allowed schools to remove disabled students who committed drug and weapon violations to an interim alternative setting for up to forty-five days. The stay put provision does not apply in these cases (Osborne, 2001).

Finally, the IDEA amendments mandated that school districts must provide IDEA's protections to students not yet identified as disabled when they have engaged in misconduct and allege that the school official knew or should have known that they were disabled. The amendments specify the circumstances under which a district would be deemed to have such knowledge. These factors might include a parent's written expressed concerns that the student may require special education services, a request for an evaluation, the student's prior behavioral and academic performance, or a teacher's expressed concern regarding the student's performance. A parent may request an evaluation during the period in which discipline is being imposed. In these cases, school districts must evaluate the student to determine their eligibility as a disabled student. All disciplinary proceedings would cease during this period. If the student did not qualify as a student with a disability, regular discipline could be imposed. If the student was identified as a student with a disability, the school district would follow the disciplinary process, as described above, for educationally disabled students (Osborne, 2001). Parents have the right to invoke the IDEA due process provisions to contest an adverse disciplinary determination (Seligmann, 2000).

The theme of the IDEA 1997 maintained that schools may discipline disabled students in the same manner as nondisabled students, when their misconduct is not a manifestation of their disability, with a few exceptions. Regular disciplinary procedures may be used with disabled students when they are nondiscriminatory, they don't result in a unilateral change in

placement, and if they do not result in a cessation of education services. Disciplinary issues must be addressed via the IEP process (Yell, Rozalski, & Drasglow, 2001).

#### *Practical Implications of IDEA 1997*

Congress attempted to address the issue of discipline through the amendments. Unfortunately, they were not able to balance a school districts ability to maintain safe and orderly classrooms while allowing disabled students to have the right to be educated with nondisabled students (Zykorie, 2003). While the amendments were intended to clarify the school district's response to discipline issues, they created more confusion (Proffitt-Dupre, 2000).

While some disabled students are not violent or dangerous, they still disrupt the classroom. School administrators must adhere to many legal rules when disciplining disabled students. Given the regulations of the IDEA, educators must exhaust all interventions to maintain the disabled student in the least restrictive environment prior to moving them to more restrictive environments (Zykorie, 2000). "The IDEA has created a dual disciplinary system in public schools where non-disabled students are held fully accountable for their actions, but students protected by the IDEA may utilize the stay-put provision to avoid fully responsibility for their actions" (Ramsingh, 1995, p. 182).

Under IDEA, virtually every disciplinary decision made by school administrators is subject to review. Parents can essentially appeal all disciplinary determinations, resulting in the loss of an administrator's ability to maintain order in a school (Thompson, 1999). In issues involving a change in placement, the stay put provision constrains the actions of administrators (Proffitt-Dupre, 2000).

The IDEA requires that IEP teams consider the use of positive behavioral interventions and supports when disabled students exhibit problem behaviors that interfere with their learning or the learning of others. There is a lack of specificity as to what these behaviors are. The IEP team must make decisions on what behaviors are significant enough to warrant conducting an

FBA and a BIP. The failure to address these behaviors adequately via the IEP process may result in the school districts failure to provide the disabled student with a free and appropriate public education (Yell, et al., 2001). Interestingly, the IDEA states that the plan must address behavior but it does not provide the detail as to the components of the plan (Hartwig & Ruesch, 2001).

Additional issues regarding the amendments have been raised. Criticism has emerged in relation to the manifestation determination. Based upon the make up of the multidisciplinary IEP team, they may lack the expertise to adequately determine if the student's actions are the result of their disability (Zykorie, 2003; Proffitt-Dupre, 2000). Thompson (1999) adds that in the financial sense, providing a free and appropriate education for students when they are subject to discipline is expensive. Extending the due process rights to protect students who are not formally identified as having disabilities who are subject to expulsion has "exacerbated by the lack of clear demarcation between the non-disabled and the disabled" (Brant, 1998, p.492).

After the amendments were implemented, suggestions for the upcoming reauthorization of the IDEA emerged. Boothby (2002) recommended a flexible expulsion rule for disabled students who bring a gun to school. He purported that there should be no double standard of discipline when it relates to bringing a gun to school. He suggested aligning IDEA with the Gun-Free Schools Act by allowing disabled students to be removed from the school setting for more than the forty five days currently permitted by the law. This would not infringe upon the right of the disabled student to continue with educational services during the removal. Additionally, Boothby (2002) suggested that there should be an emergency removal provision. This would allow schools to remove students from their current placements when they engage in acts of extreme violence that do not include the use of a gun or weapon. A hearing officer would conduct this type of emergency removal proceeding. Procedures and safeguards would have to be provided to ensure that schools used this method of removal in only extreme cases. Another suggested modification to the IDEA, in these cases, is to be able to suspend the student for up

to twenty days. The school would provide educational services after the tenth day of suspension. If a hearing was not convened, the student would be returned to his stay-put placement. If the hearing was started by the nineteenth day, the student would remain at home receiving services until the hearing was completed. The hearing officer would determine placement. In issues of placement dispute, the hearing officer's placement would be the stay-put placement (Boothby, 2002).

Thompson (1999) asserts that if the basis of the IDEA is to promote equality in education, perhaps all students should be provided with alternative education when they are suspended or expelled.

#### *The Individuals with Disabilities Education Improvement Act of 2004*

In December 2004, the IDEA was reauthorized once again. It is now referred to as the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA), or H. R. 1350. In this reauthorization, Congress searched "for a more equitable balance between the rights of disabled students to be educated with the interest of the schools in maintaining a positive learning environment" (Zykorie, 2003, p. 104).

The significant disciplinary changes evident in the IDEIA are in the areas of interim alternative educational settings, 45 day removals, manifestation determinations, placement during appeals, and the protections for students not yet eligible for services (IDEIA, 2004).

The IDEIA (2004) stated that when a disabled student violates a school conduct code, school personnel "may consider any unique circumstances on a case by case basis" when determining if a change in placement to an interim alternative educational setting is necessary (§615 (k)(1)(A)).

The way in which a school district conducts a manifestation determination hearing has also been addressed. The multidisciplinary team will still be required to review all pertinent evaluations and information however the means by which the team determines the manifestation have changed. The team must determine if the conduct in question was caused

by or had “a direct and substantial relationship to the child’s disability” or if the conduct in question was the “direct result of the school district’s failure to implement the IEP”. If either of these is applicable, the conduct would be deemed a manifestation of the student’s disability (IDEIA, 2004 § 615 (k)(1)(E); Baird, 2004).

The conditions under which a multidisciplinary team could remove a student for up to forty-five school days have also changed. Previously, the multidisciplinary team could make this type of change in placement for students who carry or possess and weapon at school or knowingly possess or uses illegal drugs, or sells or solicits the sale of a controlled substance at school. The forty-five day removal option is now available to students who have inflicted “serious bodily injury” upon another person while at school (IDEIA, 2004, § 615 (k)(1)(G); (k)(1)(H)(2); Baird, 2004).

The IDEIA also changes the placement of the student during appeals in that the student would remain in the interim alternative educational setting pending a final decision, or until the expiration of the time period for removal as ordered by school personnel, whichever comes first, unless the district and the parents agree otherwise. The State must arrange for an expedited hearing within 20 school days of the request and a determination must be made within ten days after the hearing (IDEIA, 2004, § 615(k)(5)(C); Baird, 2004).

The procedural safeguards of students not yet eligible for services were changed to include that the school would not be deemed to have knowledge that the student has a disability if the parent has not allowed the student to be evaluated or has refused services or if the child has been evaluated and it was determined that the student was not educationally disabled (IDEIA, 2004, § 615(k)(5)(C); Baird, 2004).

### *Conclusion*

The discipline of educationally disabled students has continued to be a controversial issue (Hartwig & Ruesch, 2000; Maag & Katsiyannis, 2000). Parents, advocacy groups and schools are often at odds when determining the balance of ensuring the rights of disabled

students while maintaining a safe and orderly learning environment. School administrators struggle to implement zero tolerance policies, adhere to the zero reject principle, and accept a dual disciplinary system (Zykorie, 2003). While educationally disabled students are entitled to a free appropriate public education in the least restrictive environment, the disciplinary concessions made for disabled students send a clear message that disabled students are not as accountable for their actions as their nondisabled peers. The lack of personal accountability for their actions has created a false sense of security for some disabled students and has, at times, made a mockery of school codes of conduct.

The disciplinary provisions of the IDEIA go into effect in July 2005. As the country awaits the new federal regulations, we can only hope that the ambiguous terminology used in the IDEIA is further defined so that the disciplinary regulations will be appropriately applied. For example, a student may be moved to an IAES for up to forty-five days for inflicting “serious bodily injury” to another person. The lack of clarity as to how to determine if “serious bodily injury” has occurred can be very subjective. Zirkel (2003) asserts “sitting on one’s hands to the point of “serious bodily injury” to the victim subjects the district and its officials to possible civil liability in either state or federal court” (p. 37).

It is apparent that violence and disruption in the school setting has escalated in the last few decades. School administrators have been faced with many complex procedures and obstacles when navigating the law to determining if educationally disabled students can be disciplined for their misconduct. While the provisions in IDEIA seem to be more “school friendly” in helping administrators to maintain order and control in the school setting, the dual system of discipline still exists for disabled students. Given the history of the law, it is certain that the IDEIA will have its shortcomings. School administrators must be hopeful that the changes in the law will increase their ability to maintain safe, orderly schools where student learning is the primary focus.

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