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School Discipline and Students with Disabilities _____

This paper discusses issues relevant to suspension and expulsion of students with disabilities vis a vis students who do not have disabilities; reviews data on rates of discipline, suspension, and expulsion among students with disabilities; and summarizes discipline provisions in the IDEA Amendments of 1997, including data that State education agencies must report concerning the incidence of long-term suspensions or expulsions among students with disabilities in school districts. It was published by the Office of Special Education Programs (OSEP), as shown below.

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WHEN STUDENTS WITH DISABILITIES are involved in misconduct, implementation of discipline policies can be perceived as complex because of laws designed to protect these students' civil rights. Prior to 1975, an estimated 1 million students with disabilities were excluded from public elementary and secondary schools on the basis of their disability. Public Law 94-142 included due process protections to guard against further exclusion of students with disabilities on the basis of disability. In *Honig v. Doe*, the Supreme Court found that "Congress very much meant to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school." One of the limits to this authority, the "stay-put" provision, was interpreted by the Court to require that students remain in their current educational placement during due process proceedings. Districts seeking to change the educational placement of a student with a disability against the parent's will could seek a court order but could not unilaterally remove the student from school for more than 10 days. In the past 20 years, case law has defined suspensions or expulsions of more than 10 days in a school year as a change of educational placement, subject to the IDEA stay-put provision.

Recent education policy reflects an attempt to balance the rights of students with disabilities to a free appropriate public education with the rights of students to an educational environment that is safe and conducive to learning. This module describes Federal policies regarding discipline and students with disabilities, summarizes available research relevant to those policies, and outlines the discipline provisions enacted in the IDEA Amendments of 1997.

In recent years, the stay-put provision has been perceived as conflicting with goals for safe and drug-free schools by limiting the authority of school personnel to unilaterally remove students with disabilities from school for disciplinary infractions without regard for the nature of the disability or the appropriateness of behavioral interventions. Furthermore, anecdotal evidence suggests that students with disabilities continue to receive services in general education classes and schools after committing dangerous acts because of the protections awarded in IDEA, while nondisabled students are suspended or expelled for similar misconduct. The perception of a double standard has raised concern about the fairness of school discipline policies for students with disabilities (Egnor, 1996). In one qualitative study, many teachers and administrators indicated that students with disabilities should be subject to "the same disciplinary actions as other students." Some speculated that students with individualized education programs (IEPs) were aware of differences in disciplinary procedures and took advantage of the protections afforded by their special status (Butera, Klein, McMullen, & Wilson, 1998).

These perspectives raise two questions that are relevant to policy. First, to what extent are students with disabilities actually engaged in misconduct, particularly acts that are a threat to themselves or others? Second, to what extent are students with disabilities excluded from school through suspension or expulsion, as a result of misconduct?

SCHOOL MISCONDUCT/SCHOOL DISCIPLINE FOR STUDENTS WITH DISABILITIES

Under contract with the U.S. Department of Education, the Research Triangle Institute (RTI) conducted a study of misconduct and discipline for students with disabilities, using extant data from States and districts. The study found that most States did not collect the data necessary for assessing the extent or type of misconduct by students with disabilities or the disciplinary actions resulting from that misconduct. IDEA due process hearings around issues of misconduct were rare, as were court injunctions to remove dangerous students from school pending an IEP meeting. Suspension of students with disabilities was quite common, especially for males and for students with emotional disturbance. Almost 28 percent of all special education students who were suspended or expelled had emotional disturbance, while less than 9 percent of all special education students had emotional disturbance. Males were more likely than females to be suspended or expelled, and the gender discrepancy was greater among students with disabilities than for the entire school population (Fiore & Reynolds, 1996). However, this discrepancy may be attributable to the disproportionate representation of males in special education.

The researchers concluded that students with disabilities were suspended and expelled at rates that exceeded their proportion in the school population (Fiore & Reynolds, 1996). This finding was supported by a Kansas study, which found that students with disabilities were suspended/expelled at twice the rate of their nondisabled peers (Cooley, 1995). However, data from the 1994 Office for Civil Rights (OCR) *Elementary and Secondary School Compliance Reports* did not support this finding. Although disproportion was evident in a few States, an estimated 6.2 percent of students with disabilities nationwide were suspended for at least one day in 1994, compared to 7.2 percent of all students (U.S. Department of Education, 1994).

Findings on the use of corporal punishment were also discrepant. Data from OCR (1994) show that approximately 0.7 percent of students with disabilities were subject to corporal punishment,

compared with 1.1 percent of students overall (see table 1). This finding contrasts with the findings of a study of 4,391 discipline records from nine Florida schools (McFadden, Marsh, Price, & Hwang, 1992). In that study, 56 percent of students with disabilities caught fighting received corporal punishment, compared to 36 percent of nondisabled students.

Table 1.
Number and Percentage of Students with Disabilities
Subject to Different Types of School Discipline: 1994

	<u>All Students</u>		<u>Students w/Disabilities</u>	
	Number	Percent	Number	Percent
Students suspended for more than one day	3,078,314	7.2	288,508	6.2
Students subject to corporal punishment	470,683	1.1	30,541	0.7

Source: U.S. Department of Education, Office for Civil Rights. (1994). *Elementary and secondary school Civil Rights compliance reports*. Washington, DC: Author.

With regard to the types of misconduct committed, Fiore and Reynolds (1996) estimated that 80 percent of reported incidents involving students with disabilities were fights or general misconduct. Weapons offenses accounted for 6 percent of all reported misconduct for students with disabilities and 5 percent of misconduct overall. The vast majority of weapons offenses involved possession or concealment, as opposed to use.

McFadden et al. (1992) found that defiance of school authority (27 percent), bothering others (20 percent), fighting (15 percent), and unacceptable physical contact (8 percent) were the most common offenses for students with disabilities. Defiance of authority, fighting, and bothering others were also common among nondisabled students. However, 12 percent of nondisabled students were disciplined for truancy, a form of misconduct that was rare for students with disabilities.

Cooley (1995) found no differences in the type of misconduct leading to suspension/expulsion of students with and without disabilities. For all students, disobedience, altercations with other students, disrespect, and smoking were the most frequent forms of misconduct leading to suspension/expulsion. Incidents involving weapons and drugs were far less common. Of those students with disabilities who were suspended/expelled, 3 percent were suspended/expelled for a drug offense, 2 percent for possessing a gun, and 2 percent for possessing a knife. These percentages were very similar to the percentages for students without disabilities.

DISCIPLINE PROVISIONS OF THE IDEA AMENDMENTS OF 1997

The 1997 Amendments contain exception to the stay-put provision; the exception states that, if a student with a disability brings a weapon to school, commits a drug offense, or a hearing officer determines that the district has demonstrated by substantial evidence that maintaining the student's current placement is substantially likely to result in injury to the child or others, the student may be placed immediately in an interim alternative educational setting (AES) for up to 45 days. The student's IEP team and, in the case of a hearing, the hearing officer, are given the

authority to determine an appropriate interim AES. This policy gives local administrators the authority to unilaterally change a student's educational placement under certain circumstances but also provides protections for students. Students placed in an interim AES are guaranteed access to the general education curriculum, continuation of IEP-specified services, a functional behavioral assessment, and implementation of positive strategies to address behavior.

Under Section 615(k)(1)(A)(ii) and (B):

(A) School personnel . . . may order a change in the placement of a child with a disability -- (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if -- (1) the child carries a weapon to school or to a school function . . . ; or (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function [I]f the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension . . . , the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or (ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer -- (A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others

The IDEA Amendments of 1997 require that States report to the Secretary each year the number of students with disabilities removed to interim educational settings, the acts precipitating those removals, and the number of students with disabilities subject to long-term suspension or expulsion. Those requirements indicate that:

Each State . . . shall provide data each year to the Secretary . . . on . . . (I) the number of children with disabilities, by race, ethnicity, and disability category, who under subparagraphs (A)(ii) and (B) of section 615(k)(1), are removed to an interim alternative educational setting; (II) the acts or items precipitating those removals; and (III) the number of children with disabilities who are subject to long-term suspensions or expulsions(Section 618[a][1][A][vii]).

States (began) reporting these data in 1998-99. The IDEA Amendments of 1997 also require that States examine "data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities -- (i) among local education agencies in the State; or (ii) compared to such rates for nondisabled children within such agencies" (Section 612[a][22][A]).

Nowhere in the provisions of IDEA or in other Federal statutes do lawmakers specifically recognize students with disabilities as likely victims of school violence and misconduct. Research suggests that individuals with mental retardation are vulnerable to psychological and physical abuse (Edgerton, 1981; Halpern, Close, & Nelson, 1986); adolescent males with learning disabilities are more likely than their peers without disabilities to be victims of crime (Bryan,

Pearl, & Herzog, 1989); and youth with emotional disturbance who exhibited low personal/social skills were more likely than other youth with disabilities to be victimized during their school careers (Doren, Bullis, & Benz, 1996).

SUMMARY

The IDEA Amendments of 1997 sought to clarify the relationship between the right to a safe learning environment and the rights of students with disabilities to a free appropriate public education. Limitations in available data preclude a thorough assessment of the extent to which students with disabilities are subject to long-term suspension or expulsion. In fact, it is not clear whether students with disabilities are more likely than students without disabilities to engage in serious misconduct or to be suspended from school. The IDEA Amendments of 1997 require States to report the number of students with disabilities subject to long-term suspension/expulsion and removed to AESs for disciplinary reasons.

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