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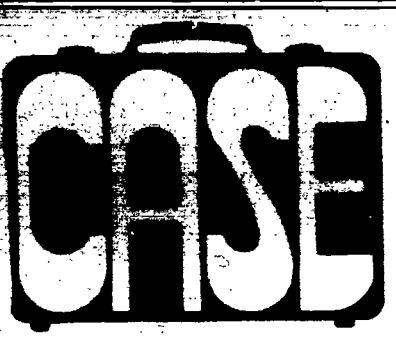
ABSTRACT

This guide for principals examines legal principles guiding public school administrators in their relations with students. It reviews students' rights and administrators' responsibilities in general and then addresses federal and state statutory mandates that afford additional protections to students with disabilities. The section on students' rights and administrators' responsibilities discusses due process, equal protection, first amendment protections, and administrator liability. The section on rights of children with disabilities explores: identification of children with disabilities; procedural safeguards; right to appropriate educational programs; and application of school policies to students with disabilities in connection with disciplinary practices, testing programs, graduation requirements, interscholastic sports, and students' records. (Contains 83 footnotes.) (JDD)



COUNCIL OF ADMINISTRATORS
OF SPECIAL EDUCATION,
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A DIVISION OF THE COUNCIL FOR EXCEPTIONAL CHILDREN

THE PRINCIPAL'S BLUE BOOK ON SPECIAL EDUCATION

PART I: Administrators & the Law Governing Disabled Students

INDIANA UNIVERSITY

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Administrators

and the Law

Governing

Students with Disabilities

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ADMINISTRATORS AND THE LAW GOVERNING STUDENTS WITH DISABILITIES[1]

Building administrators are expected to assume a range of roles including instructional leader, business manager, disciplinarian, and school/community liaison. An increasingly significant responsibility of principals pertains to the provision of appropriate educational programs for students with disabilities. In performing all of these roles, principals are expected to be knowledgeable of the escalating number of legal mandates governing their daily activities and to act in compliance with the law. Building administrators cannot plead "ignorance of the law" as a defense for violating clearly established legal requirements.[2]

This reference paper addresses legal principles that should guide public school administrators in their relations with students. The initial section provides an overview of students' rights and administrators' responsibilities in general. The second section focuses on federal and state statutory mandates that afford additional protections to students with disabilities.

Despite the increasing number of federal and state legal requirements, school administrators retain considerable discretion in making decisions regarding the daily operations of their schools. Administrators are expected to exercise reasonable judgment, drawing on their educational training and knowledge of the law. Throughout this paper, general guidelines are highlighted to assist administrators in reducing their legal vulnerability as they make instructional and disciplinary decisions regarding pupils.

SECTION I

An Overview of Student's Rights

This section addresses students' rights and corresponding responsibilities of administrators in connection with due process, equal protection, and first amendment guarantees. The last part of this section deals with the potential liability of school administrators for violating legal mandates.

Due Process of Law

The fourteenth amendment to the Federal Constitution in part prohibits state action that deprives a person of life, liberty, or property without due process of law. The fifth amendment contains a similar due process clause directed toward actions of the federal government. These due process clauses form a basic tenet of the United States system of justice and, in essence, guarantee fundamental fairness when governmental action threatens to deprive individual rights. In the public school setting, constitutional due process entitles students to notice of the charges against them and the opportunity for a fair hearing prior to the deprivation of liberty or property rights. The hearing need not be elaborate in all situations, but it must provide an opportunity for all interested parties to present evidence that might affect the decision.

In a significant 1975 decision, Goss v. Lopez, the Supreme Court held that students have a state-created property right to attend school, so even a short-term suspension from the regular instructional program necessitates minimum procedural safeguards.[3] The Court also emphasized that suspension from school implicates students' constitutionally protected liberty

interests because of the potentially damaging effects that the disciplinary process can have on a student's reputation. The Court suggested that any suspension, even for one class period, must be accompanied by procedural due process. For brief suspensions, an informal conversation in which the student is given the opportunity to refute the charges would satisfy constitutional requirements. The nature of the deprivation determines how elaborate the procedures must be, with more serious impairments (e.g., expulsions) necessitating more formal proceedings.

The Supreme Court has distinguished corporal punishment from school suspensions, noting that the denial of school attendance is a more severe penalty. Recognizing that the purpose of corporal punishment might be diluted if elaborate procedures had to be followed before its use, the Court in 1975 rejected a claim that corporal punishment implicated constitutional due process rights.[4] The Court noted that state remedies (e.g., assault and battery suits) are available to contest excessive corporal punishment in public schools.

Building administrators have a responsibility to ensure that the staff members under their supervision are knowledgeable regarding students' due process rights. Principals would be wise to distribute clearly written discipline policies and procedures to staff, students, and parents and to review such documents in faculty meetings on a regular basis. If a teacher suspends a student from class without providing the requisite opportunity for the student to refute the charges, the principal is also culpable.

When a student's due process rights have been violated, courts will order the records to be expunged and the student to be reinstated until proper procedures have been followed. Students, however, cannot obtain monetary damages if only their procedural rights have been impaired; they must prove that they have suffered a substantive injury (e.g., imposition of an unjustified suspension) for an award of damages to be assessed by the courts.[5]

In addition to disciplinary proceedings, the judiciary also has recognized that due process is required in instructional matters. For example, courts have ruled that high school diplomas cannot be conditioned on passage of a test unless students have been given sufficient notice of the requirement and received adequate preparation in the content covered on the test. In 1981 the Fifth Circuit Court of Appeals indicated that students should be advised upon entrance into high school if passage of a competency test will be required prior to graduation.[6]

Many state and federal laws prescribe more elaborate procedural safeguards than constitutionally required in connection with student discipline and instructional matters. For example, state laws or school board policies can place restrictions on the use of corporal punishment as a disciplinary technique or require specific procedures to accompany its use. Also, as will be discussed in Section II, students with disabilities have statutory rights to detailed procedural protections in academic placement decisions as well as in disciplinary matters. While courts are reluctant to overturn decisions of school authorities, they will intervene if prescribed procedures have not been followed. School authorities are never faulted for providing too much due process, so they would be wise to ensure that at least minimum procedural safeguards accompany any nonroutine change in a student's status, whether for disciplinary or academic reasons.

Equal Protection of the Laws

In part the fourteenth amendment guarantees equal protection of the laws to all individuals. Since the mid-1950's the equal protection clause has generated some of the most significant school litigation, beginning with the 1954 landmark desegregation decision, Brown v. Board of Education of Topeka.[7] In Brown, the Supreme Court declared that separate schools for black and white children are inherently unequal; thus, schools segregated by law or other

official state action abridge the equal protection clause.

The Brown decision has spawned over three decades of litigation in which a range of public school practices have been challenged as discriminatory on the basis of race, alienage, gender, disabilities, age, wealth, and other inherent or acquired traits. Public schools must present a compelling justification for differential treatment of individuals based on inherent characteristics considered "suspect", such as race or national origin. This is a very difficult standard to satisfy. Gender classifications, while not considered constitutionally "suspect", can only be justified if substantially related to the achievement of important governmental objectives. Some gender classifications in public schools have been upheld (e.g., sex-segregated contact sports), but other differential treatment based on sex has been struck down, such as limiting enrollment in specific classes (e.g., home economics, industrial arts) to one gender. For most other classifications, such as those based on age, wealth or disabilities, public schools can satisfy the equal protection clause by demonstrating that the classification employed has a rational relationship to legitimate governmental objectives.[8]

The equal protection clause has become increasingly popular as a tool to attack various types of differential treatment of students in public schools (e.g., viewpoint discrimination in student publications) as well as facially neutral practices (e.g., special education placements, competency testing programs, ability grouping schemes, and disciplinary measures) that have a disparate impact on specific categories of students such as minorities. School authorities must be able to establish a nondiscriminatory rationale for a practice that has a disparate impact on identified groups of students. For example, some ability grouping plans that result in a disproportionate number of minority students being placed in lower instructional tracks have been upheld if evidence substantiates that the plans are designed to improve educational opportunities rather than to segregate minority students.[9]

While students cannot be intentionally disadvantaged because of their inherent traits, this does not mean that the identical treatment of all students is required. Indeed, students can be treated differently to meet their unique needs, and in some instances differential treatment is required to assure equal educational opportunities. For example, students with limited English proficiency are entitled to special assistance (e.g., bilingual education or remedial English classes) to overcome their language deficiencies.[10] As will be discussed in Section II, a considerable amount of litigation has focused on special treatment necessary to provide equal educational opportunities for children with disabilities.

First Amendment Protections

The first amendment in part prohibits governmental action respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, press, or assembly. No individual rights are as preciously guarded as are first amendment freedoms. Courts have recognized, however, that students' first amendment rights are not coextensive with those of adults and that first amendment guarantees must be applied in light of the special circumstances of the public school.[11]

Accordingly, the Supreme Court has ruled that students can be disciplined for vulgar and lewd speech that appears to represent the school.[12] School authorities can also censor school publications, theatrical productions, and other school-sponsored activities to advance pedagogical objectives.[13] While politically motivated censorship by school officials would offend the first amendment, restrictions can be imposed on course content and instructional materials to ensure their educational suitability.[14] School authorities have considerable discretion in governing the content of school-sponsored activities as long as they do not

discriminate against particular viewpoints.

The religion clauses of the first amendment have also generated a substantial body of litigation. These clauses prohibit governmental action respecting an establishment of religion (establishment clause) or interfering with the free exercise of religious beliefs (free exercise clause).

The establishment clause is clearly abridged if school authorities sanction activities designed to influence students' religious beliefs, such as daily prayer, Bible reading, or other devotional activities in public schools.[15] While the academic study about religion is permissible, and indeed desirable, public educators cannot cross the line to religious indoctrination. However, student-initiated religious meetings can be held in public high schools during noninstructional time if the school has created a limited forum for noninstructional student groups to meet.[16]

Among the most volatile first amendment claims are allegations that public schools are promoting an antitheistic creed -- secular humanism -- in violation of the establishment clause. Conservative parent groups increasingly are challenging various instructional materials and course content (e.g., sex education, evolution, values clarification) as promoting secular humanism by placing human reason above divine guidance. Some courts have suggested that secular humanism, if narrowly defined as an antitheistic creed, may be considered a "religion" for first amendment purposes, and thus, its advancement in public schools would be prohibited by the establishment clause. But the judiciary has not found that challenged courses and materials advance this creed.[17] Given the increasing number of challenges to the public school curriculum, school authorities would be wise to have written procedures in place for handling curriculum complaints and explicit criteria to judge the educational merits of instructional materials and offerings that are challenged.

In addition to dealing with religious attacks on the curriculum, building administrators are often called on to make sensitive decisions in connection with requests for religious accommodations for specific students. The free exercise clause entitles students to reasonable governmental accommodations to enable them to practice their religious beliefs. For example, students have been excused for religious reasons from participating in sex education classes, coeducational physical education classes, the pledge of allegiance to the American flag, and officers' training programs.[18] Students have even been excused on religious grounds from particular assignments, such as reading a specific novel, if other assignments can be substituted to achieve the instructional objectives.[19]

Courts have drawn the line, however, where the requested exemption would interfere with the management of the school or advance religion in violation of the establishment clause. For example, the Sixth Circuit Court of Appeals rejected a request for fundamentalist students to be excused from exposure to the reading series used in grades one through eight in a Tennessee school district.[20]

Administrator Liability

Historically, when the legality of school practices was successfully challenged, school administrators would simply be told to eliminate the unlawful practice. Thus, there was little incentive to stop unlawful acts until judicially required to do so. During the past two decades, however, courts have increasingly assessed damages against school officials for deprivations of federally protected rights. Damages can be assessed to compensate the victim for the injury suffered (e.g., impairment of first amendment rights). In some instances, punitive damages

have also been assessed against school authorities where the deprivation was intentional. If public school officials can establish that they acted in "good faith" with proper motives, they may be shielded from damages even though their actions violated federally protected rights. However, as noted previously, "ignorance of clearly established law" cannot be used as a defense.[21] Administrators are not expected to anticipate how the law will be interpreted in the future, but they are expected to be knowledgeable regarding well established legal mandates.

Federal violations are not the only source of liability; school authorities can be held liable under state law for negligent acts or conduct that falls below an acceptable standard of care. A considerable body of school law entails civil suits for damages to compensate individuals for injuries incurred due to the negligent acts of teachers, administrators, and school boards. Principals and other educational personnel are expected to exercise an appropriate standard of care in light of the duty they owe students to protect them from harm. If this duty is breached, damages may be assessed against the administrators for resulting injuries.

In addition to a duty to protect students from physical harm, school authorities also have a duty to ensure that appropriate instruction is provided. In several cases, students have alleged that the public school has breached its duty to provide adequate instruction. No successful instructional negligence (educational malpractice) case against a public school district has been reported to date; courts have been reluctant to intervene in matters of educational policy involving pedagogical decisions.[22] There is some sentiment, however, that prospects for a successful educational malpractice suit may be more promising than they were a decade ago.[23] As state legislatures and school boards become more explicit in specifying students' instructional rights (e.g., competency standards that must be met before promotion; procedures for diagnosing students' needs and placing them in instructional programs), the grounds for establishing instructional negligence may be strengthened. While it is unlikely that public schools will be held accountable for a specific level of student achievement, they may be held legally responsible for appropriate diagnosis, instruction, and assessment.

Most states have laws that impose liability on educators for failure to report suspected child abuse. Indiana's law is typical in stipulating that any person who has reason to believe that a child is a victim of child abuse or neglect and fails to make a report is guilty of a Class B misdemeanor with penalties of up to 180 days imprisonment and $1,000 in fines (Ind. Code 31 6-11-1 et seq.). Seldom have administrators been held liable for failure to report suspected abuse by a parent, but there is a growing body of litigation in which school personnel have been convicted of a misdemeanor and fined for failure to report suspected abuse by another school employee.[24] Most laws waive the privilege of confidentiality between professionals (e.g., school counselors or psychologists) and their clients in situations involving child abuse; immunity is also conferred on individuals who report suspected abuse in good faith.

Cases of child abuse involving school personnel, while not common, receive a disproportionate amount of publicity. Thus, building administrators should ensure that their staff members are knowledgeable regarding the identification of child abuse and that they take precautions to avoid situations that might elicit child abuse charges.

Section II

Rights of Children with Disabilities

Since children with disabilities represent a vulnerable minority group, the treatment of these children has aroused a great deal of judicial and legislative concern. During the 1980s over 40% of the litigation dealing with students' rights focused on handicapped students. Children with disabilities are guaranteed substantive and procedural rights under two federal laws, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C § 794) and The Education for All Handicapped Children Act of 1975 (20 U.S.C. § 1401) which became the Individuals with Disabilities Education Act (IDEA) in 1990.* Section 504 is a civil rights law and bars discrimination against otherwise handicapped individuals in employment and education. The IDEA is a federal funding law that supplies a portion of excess costs associated with providing appropriate educational services for handicapped children. To receive such federal aid, state and local education agencies must comply with detailed procedural guidelines and assure that each child with disabilities is provided an individualized education program (IEP) that is cooperatively designed by parents and regular and special educators.[25] All states have laws similar to the IDEA, and some state mandates provide additional protections for children with disabilities.

This section focuses on several topics that should be of particular concern to building administrators: identification of children with disabilities; procedural safeguards afforded such children; the rights of children with disabilities to appropriate educational programs; and the application of school policies to these students in connection with disciplinary practices, testing programs and graduation requirements, interscholastic sports, and students' records.

Identification of Children with Disabilities

The federal protections afforded to children with disabilities are based on the "zero reject" premise that all such children should be identified, evaluated, and instructed appropriately. States must institute a comprehensive program to identify all children who are mentally retarded, learning disabled, physically handicapped, or otherwise health-impaired, who require special education and related services. Building administrators are expected to play a leadership role in identifying students with disabilities who would benefit from special education and ensuring that they receive appropriate diagnostic services.

The entitlement of disabled preschool children to special education services depends on state law. While the IDEA mandates that services must be available for all handicapped children between the ages of three and twenty-one, school districts are not obligated to provide preschool programs for these students unless programs are provided for nonhandicapped children at this level. A New York appeals court, however, ruled that the Family Court could order special education services to be provided for children with disabilities even though children under the age of five are not covered by the state education law.[26]

Children who are merely slow learners, but not classified as handicapped under the IDEA, would not be entitled to an IEP and other statutory protections afforded to students with disabilities. A Pennsylvania federal district court recently rejected parents' claim for damages because their child, who was a slow learner, was not provided individualized education.[27]

*This law is referred to as the IDEA throughout this section, even though most of the cases were rendered when it was still called the Education for All Handicapped Children Act.

In 1989 the Supreme Court declined to review a significant decision in which the First Circuit Court of Appeals interpreted the federal law as requiring school districts to provide educational services for every handicapped child regardless of the severity of the child's disabilities.[28] The lower court had concluded that children incapable of benefiting from instruction were not entitled to IEPs, but the appellate court disagreed, declaring that a determination of "ability to benefit" was not a prerequisite to the provision of educational services. This decision has sparked lively debate regarding what constitutes "education" and whether public schools currently are being required to support some services that are beyond their competence and fiscal capacity.

Considerable controversy has surrounded the status of children with Acquired Immune Deficiency Syndrome (AIDS) under federal laws protecting the handicapped. Several courts have concluded that AIDS victims are handicapped within the meaning of Section 504 of the Rehabilitation Act and thus such individuals cannot be discriminated against solely because of their disability.[29] It is clearly unlawful for school boards to enact policies prohibiting all students with AIDS from attending school or segregating them from other students. Courts have ordered school officials to readmit AIDS victims who had been excluded from a regular, integrated classroom setting. In 1988, an Illinois federal district court noted that "if AIDS-infected children are segregated, they will suffer the same feelings of inferiority" that the Supreme Court sought to eradicate when it delivered the landmark Brown desegregation decision in 1954.[30]

In a widely publicized case, the Eleventh Circuit Court of Appeals reversed a lower court's decision that a separate cubicle must be constructed to segregate an AIDS victim from other children in a special education class. The court held that the trial court's finding of a remote possibility of transmission of AIDS from the child's tears, saliva, and urine did not justify segregating the child; based on evidence of the child's minimal risk of infecting classmates, the court ordered him admitted to school.[31]

School authorities, however, may be able to justify the exclusion of specific AIDS victims from attending regular classes if medical evidence indicates that the children pose a health threat to others. Each case must be reviewed individually, and school authorities carry a heavy burden in proving that an excluded student poses an actual health threat. A California school district was enjoined from excluding a child with AIDS from a kindergarten class after the child had bitten a classmate. Although the Centers for Disease Control have recommended that a more restricted environment might be appropriate for AIDS-infected children who bite, the federal district court concluded that the overwhelming weight of medical evidence indicates that AIDS is not transmitted by human bites. Therefore, the court held that the child posed little risk of harm to others.[32]

While general consensus exists that Section 504 protects children with AIDS from discrimination in school, they are not automatically entitled to IEPs under the IDEA. An Illinois federal district court, for example, ruled that the Act applies to AIDS victims only if their physical condition is such that it adversely affects their educational performance.[33] The court reiterated that the IDEA applies only to children with disabilities who require special education services. Thus, if children with AIDS are able to perform in the regular classroom, they are not covered by the federal law.

There has been dispute regarding whether individuals suffering from alcohol or drug addictions are considered "handicapped" under Section 504. For employment purposes, such addictions are specifically excluded from Section 504 protections, but the Office of Civil Rights

has ruled that students with drug or alcohol addictions are considered physically or mentally impaired.[34] As with AIDS victims, however, students with such addictions would be entitled to IEPs only if their condition necessitates special education.

Procedural Protections

A central feature of the IDEA is the guarantee of extensive procedural safeguards in the identification, evaluation, and placement of children with disabilities. Prior to the evaluation of a child, parents must be given detailed information regarding their procedural rights under the IDEA and any additional protections afforded by state law or administrative regulations. Communication must be in the parents' native language with appropriate adaptations for any handicapping conditions (e.g., blindness) that the parents may have.

Before an IEP is designed for a child, a full evaluation must be conducted. Written parental consent is required to conduct this evaluation and to place the child in special education. Under the IDEA, no single criterion can be used to determine the placement of a child with disabilities, and nonbiased assessment procedures that account for the child's cultural and language background must be used. If parents disagree with the assessment of their child's needs, they have the right to secure an independent evaluation at public expense.[35]

As noted previously, the IEP for each child with disabilities must be designed by a team, which includes regular and special educators, the child's parents or guardians, and the child if appropriate. In situations where the parents and school personnel cannot agree on the IEP for a specific child with disabilities, an impartial due process hearing must be provided. To ensure impartiality, the IDEA stipulates that hearing officers cannot be employees of the school district where the child is enrolled or university personnel involved in the formulation of state policies concerning special education. An unappealed decision of a hearing officer is considered final.

Any substantive changes in the placement of a student with disabilities must be accompanied by procedural safeguards, and the parents must be notified and involved in the planning committee's deliberations. Written parental permission is required prior to any significant changes in the child's placement. Under the "stay put" or "status quo" provision of the IDEA, a child with disabilities is entitled to remain in the current educational placement pending the outcome of review proceedings.[36] Thus, school authorities cannot unilaterally change a child's placement without parental consent.

Parents must exhaust administrative remedies specified in the IDEA before initiating judicial proceedings.[37] However, such administrative remedies need not be exhausted if a violation of procedural requirements is being contested. For example, parents of a child with disabilities, who was suspended from school and not offered a hearing for 29 days, were not required to exhaust administrative remedies before seeking judicial relief.[38]

Right to Appropriate Programs

The procedural requirements in the IDEA are fairly clear, but controversy remains over the substance of IEPs. Administrators have often found themselves involved in controversies over what constitutes the free appropriate public education that must be provided to all children with disabilities under the Act. Until 1982, substantial disagreement existed over whether these children were entitled to an optimum program to maximize their learning potential or whether the provision of a minimally adequate program would satisfy the federal law.

In a significant 1982 decision, Board of Education of the Hendrick Hudson Central School District v. Rowley, the Supreme Court rejected the lower courts' conclusion that an appropriate program is one that maximizes the potential of handicapped children "commensurate with the opportunity provided to other children."[39] The Court reasoned that the federal law was designed to provide a "basic floor of opportunity" to children with disabilities in terms of "access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child."[40] The Supreme Court indicated that it is not the judiciary's role to define what is an appropriate program for a specific child; rather the court should ensure that correct procedures have been followed and that the program is "reasonably calculated to enable the child to receive educational benefits."[41]

School authorities can satisfy the IDEA by substantiating that a proposed program is adequate, even though other programs may be more appropriate. In 1988 the Eighth Circuit Court of Appeals noted that if a child with disabilities is progressing satisfactorily in his or her current placement, it is not the role of the court to question whether different methods might work better.[42] It should be noted, however, that state laws may provide more extensive rights to such children than provided by the IDEA.[43] For example, Michigan law stipulates that children with disabilities are entitled to an educational program that maximizes their potential. Interpreting this mandate in 1986, a Michigan appeals court noted that if two programs are considered suitable to enable a handicapped child to reach his or her potential, it would seem reasonable to select the less expensive program.[44]

Least Restrictive Environment. Within the continuum of placements available for children with disabilities, the child must be educated in the least restrictive environment (LRE). This means that the placement must allow for maximum integration with nonhandicapped children, while still meeting the special needs of children with disabilities. For example, the Ninth Circuit Court of Appeals did not condone homebound instruction where evidence indicated that the disabled child could be appropriately educated with other children.[45] Several courts have rejected parental requests for placement of their children in segregated facilities, concluding that placements designed to facilitate the children's transition from special to regular classes were less restrictive.[46]

Other courts, however, have upheld segregated placements for specific children with severe disabilities, concluding that such placements are appropriate, given the children's special needs. The Ninth Circuit Court of Appeals noted that mainstreaming "must be balanced with the primary objective of providing handicapped children with an 'appropriate' education."[47] The Eight Circuit Court of Appeals similarly ruled that the minimal benefit a severely mentally retarded child would receive from placement in a regular elementary school rather than a state school for handicapped children would not justify the high cost of providing a special teacher for the child in the regular school. The court emphasized that the cost of the placement and the benefit to the child were legitimate considerations in determining the least restrictive appropriate environment.[48] From litigation to date regarding what constitutes the least restrictive environment, it appears that planning committees can consider the quality of the alternative programs as well as the cost of providing services in a nonsegregated setting.

Private Placements. Children with disabilities are entitled to be placed in private facilities if appropriate public placements are not available. In some instances, school districts have been held responsible for residential costs of private placements even in other states.[49] Residential placements are required, however, only when appropriate services cannot be delivered through a day program.

Several cases have focused on whether the school district is obligated to pay for noneducational costs associated with residential placements. Where medical, social and

emotional problems that require residential treatment are intertwined with educational problems, the school districts often have been held responsible for the costs of residential placements.[50] However, the Ninth Circuit Court of Appeals held that a school district was not responsible for a child's care at a psychiatric hospital because the hospitalization was for medical, rather than educational, reasons.[51]

If parents unilaterally select a private placement, even though an appropriate public program is available, they are not entitled to reimbursement for tuition costs. But in a significant 1985 decision, Burlington School Committee v. Department of Education, the Supreme Court ruled that where parents disagree with the proposed public placement and unilaterally enroll their child with disabilities in a private school prior to exhaustion of review procedures, they can recover tuition costs if it is ultimately decided that the proposed public placement was not appropriate.[52] Since review procedures are often quite lengthy, perhaps up to eight years, the Burlington holding has significant implications for school districts. Previously there was little financial incentive for school authorities to ensure that the proposed public program was appropriate, because it might have been years before appeals were exhausted and a final determination made that the child was entitled to a private placement. During the interim, if the parents had unilaterally enrolled their child in a private facility, the costs would have been the parents' responsibility. This no longer is the case, however, in light of the Burlington ruling. Parents can place their child in a private facility before appeals are exhausted, and if they eventually prevail in contesting the school district's proposed placement, they can recover the back tuition expenses.

In 1988, for example, the Fourth Circuit Court of Appeals ruled that parents who unilaterally placed their learning disabled child in a private institution were entitled to recover costs for the private placement.[53] Evidence substantiated that education officials had failed to provide the child with an appropriate program as required under the federal law because they did not conduct the required multidisciplinary review or involve the child's parents in preparation of the individualized education program. The same court previously upheld reimbursement to parents for a private placement where the school district had sufficient evidence that the proposed behavioral adjustment classroom was not appropriate for a learning disabled child.[54]

It should not be assumed, however, that unilateral placements will always result in reimbursement to parents. Parents assume the risk of an ultimate determination that the proposed public program was appropriate. For example, the Tenth Circuit Court of Appeals held that a school district's proposed program of one-on-one instruction and counseling was appropriate for a child with disabilities, and thus denied the parents' request for tuition reimbursement in a private facility.[55] Also, parents who removed their child to a private placement were not entitled to reimbursement where there was no evidence that the school district was unwilling to make changes in the child's IEP to assure an appropriate education.[56] If parents place their child in a private school that is not approved by the state, tuition reimbursement cannot be obtained.[57]

Year Round Services. A number of cases have focused on disabled students' entitlement to extended year services. Courts have not ruled that the IDEA automatically entitles all disabled children to services during the summer, but they have invalidated policies that preclude school districts from providing extended year programs for children who may need such services.[58] Where substantiated that an individual child might regress substantially from an interruption in his or her program, year-round services must be provided to satisfy the IDEA. In 1990 the Sixth Circuit Court of Appeals held that a school district was not required to pay for a summer program for an autistic teenager because the summer break in his program would not substantially impede his progress. The court noted, however, that a public school must provide

summer services if expert testimony indicates that the child would significantly regress otherwise.[59]

Related Services. Under the IDEA, children with disabilities are entitled to related services including transportation and such developmental, corrective, and other supportive services as may be required for the children to benefit from special education.[60] However, only students with disabilities that require special education are entitled to related services. In an illustrative case a New Jersey appellate court concluded that transportation to a private school was not required for an orthopedically handicapped student who did not require special education services.[61] Also, if parents reject the placement proposed by the school and do not pursue appeals procedures, the parents forfeit their entitlement to reimbursement for transportation costs and other related services.[62]

Several issues regarding related services have been controversial, especially the definition of medical services. Under the IDEA, school districts do not have to provide medical services, except for diagnostic and evaluative purposes. In 1984 the Supreme Court distinguished medical services, which are provided by a licensed physician, from health services, which can be provided by a school nurse or other qualified person. The public school would be obligated to provide services only in the latter category. Finding that clean intermittent catheterization can be performed by a nurse, the Court held that a child with disabilities had a right to this service which was necessary for the child to attend school.[63] The Court, however, limited the school's obligation to personnel services, implying that related services requiring specialized equipment would not be required under the federal law.

Several courts have also ruled that psychotherapy is a related service (rather than a medical service) that must be provided by public school districts if necessary for the child to benefit from the educational program. Although a Massachusetts hearing officer denied reimbursement for the costs of psychotherapy and group therapy because the focus of the sessions was not the child's education, the federal district court reversed, concluding that reimbursement would be appropriate as long as such services assist the child in benefiting from special education.[64]

Some recent controversies have focused on whether constant nursing care for a child with disabilities at school is considered a medical or health service under the federal law. The Second Circuit Court of Appeals upheld a New York federal district court's conclusion that a child with disabilities was not entitled to constant nursing care.[65] Similarly, a Pennsylvania federal district court distinguished between intermittent and constant nursing care at school, reasoning that the latter would be considered a medical service.[66] Thus, the line separating required related services from excluded medical services is not simply whether the service must be provided by a licensed physician. The scope of the service and possibly its costs are also considerations.

Discipline of Children with Disabilities

No topic has been more controversial than the expulsion of children with disabilities in public schools. Several courts have concluded that the crucial issue is whether the misbehavior is related to the handicapping condition; an expulsion constitutes a change in placement and thus cannot be imposed for behavior related to a child's disabilities.[67] School authorities carry a heavy burden in proving that the behavior eliciting the expulsion was not related to the handicap; stress and frustration are often associated with physical disabilities and can result in disruptive behavior. While several courts have upheld the school's authority to expel these children for behavior unrelated to their disability, they have noted that educational services

cannot be terminated during the expulsion period.[68] Thus, actual expulsion (i.e., completely severing educational services) of students with disabilities has not been condoned by the judiciary. From litigation to date, it appears that the appropriate action would not be expulsion, but removal of the student to a more restrictive environment on the continuum of alternative placements.

In a widely publicized case, Honig v. Doe, the Supreme Court addressed the IDEA's requirement that during the pendency of any proceedings, the child with disabilities shall remain in his or her current educational placement until proceedings have been completed.[69] The Court interpreted this "stay put" provision as precluding the unilateral exclusion from school of children with disabilities, even for dangerous conduct resulting from their handicaps. Other courts have similarly concluded that a lengthy disciplinary suspension (longer than ten days) during pendency of administrative proceedings violates the "stay-put" doctrine.[70] The judiciary has not clarified whether the ten-day suspension that is allowed applies to ten consecutive days or ten days total for a semester or school year.

Even though the Court in Honig strictly construed the "stay put" provision, schools still have options in dealing with disruptive students. Children with disabilities who pose a danger to themselves or others can be temporarily suspended from school. Also, school authorities can try to convince parents to agree to an interim placement that is more restrictive. A final recourse would be for school authorities to invoke the courts to order an interim placement if the student is truly dangerous and the parents do not agree to the school's proposal.

Most legal controversies have focused on the expulsion of children with disabilities, but the application of other disciplinary techniques to such children has evoked some litigation. Courts have upheld the use of temporary isolation ("timeout") as constituting a minimal interference with students' liberty interests and not unduly harsh as a disciplinary technique.[71] While assignment to a time-out room would be considered an in-school suspension, as long as the assignment is temporary it is within school officials' authority and ability to discipline students. Upholding the use of time-out strategies, an Indiana federal district court also ruled that an emotionally disturbed student was not entitled to an exemption from the school's normal disciplinary procedures regarding the administration of corporal punishment, as long as this child received the same punishment as other children engaged in similar conduct.[72] This court further endorsed the disciplinary technique of having the child tape his own mouth shut, noting that this was a symbolic strategy designed to remind the student to remain silent and resulted in minimal physical discomfort.

Testing Programs and Graduation Requirements

Student testing programs have generated a substantial body of litigation. As noted in Section I, the judiciary has upheld the school's authority to impose testing requirements and to make instructional decisions on the basis of such scores. Students with disabilities, however, have statutory rights that must be respected in making placement decisions and administering tests for placement purposes.

For example, the IDEA stipulates that tests or other evaluation strategies must be validated for the purposes for which they are used, must be nondiscriminatory, and must be administered in the student's native language. Also, multiple criteria must be used in placement decisions. Thus, a child cannot be placed in a special education program solely on the basis of a test score.

Several cases have involved claims of racial discrimination in the placement of students

in special education classes. The Ninth Circuit Court of Appeals held that the results of intelligence tests cannot be used to place minority students in classes for the educable mentally retarded (EMR).[73] The court concluded that the tests, which had been standardized for white, middle-class students, were biased against black students and contributed to their disproportionate placement in EMR classes. An Illinois federal district court, however, reached an opposite conclusion. The court found little evidence of cultural bias in standardized intelligence tests; thus, use of these tests in conjunction with other criteria for determining pupil placements was upheld.[74]

The participation of children with disabilities in proficiency testing programs has been controversial, especially where receipt of a high school diploma is conditioned on passage of a test. As noted in Section I, courts have upheld the state's authority to implement proficiency testing programs as long as sufficient notice of the test requirement is provided, a match between the instructional program and test is established, and students who started school under segregated conditions are not denied diplomas solely on the basis of a test score.[75]

The application of test requirements to children with disabilities, however, presents particular problems. While the state does not have to alter its standards, including test requirements, for disabled children, these children cannot be denied the opportunity to earn a high school diploma. In short, they cannot be prohibited from participating in the testing program.[76]

In some situations, however, specific categories of children with disabilities are given the option of not participating in a proficiency testing program if there is little likelihood that the children could master the material covered on the test. Those who decline to take the test are usually awarded certificates of school attendance or some other alternative diploma. Courts have not been persuaded that children with disabilities should be awarded regular diplomas based solely on successful completion of their IEPs. In fact, if nonhandicapped students who failed the test were denied diplomas while students with disabilities who had not taken the test were granted diplomas, equal protection rights of the nonhandicapped might be impaired.

While graduation standards do not have to be altered for children with disabilities, such children are entitled to special accommodations in preparation for the tests and in the administration of the proficiency testing programs. The Seventh Circuit Court of Appeals indicated that students with disabilities deserve lengthier notice of proficiency test requirements to ensure an adequate opportunity for the material on the test to be incorporated into their IEPs. The court suggested that children with disabilities should be advised during elementary grades that a test will be used as a prerequisite to receipt of a high school diploma.[77]

Children with disabilities are also entitled to accommodations in test administration to ensure that their knowledge, rather than their handicapping condition, is being assessed. For example, alternative test formats, such as Braille tests for the visually impaired, and alternative settings, such as private rooms or flexible time frames, must be provided.

Participation of Children with Disabilities in Interscholastic Sports

The exclusion of students from interscholastic competition solely because of their disabilities raises delicate issues. Administrators have been faced with situations where they must weigh the health risks to students with disabilities against the benefits that may be gained from interscholastic participation. School officials have considerable latitude in making decisions based on valid health concerns for the disabled child or teammates. Such decisions,

however, should be made on an individual basis, considering all pertinent medical evidence.

Partially sighted students in New York were unsuccessful in a federal suit challenging a school board policy that barred students with defective vision from participating in contact sports.[78] However, one of the students brought suit in state court and was granted relief. The New York appellate court enjoined the school district from denying her participation on contact teams, noting the availability of protective eyewear to minimize the risk of injury.[79] Also, a Pennsylvania student with one kidney secured a court order enjoining the school district from barring him from the high school football team. The federal district court reasoned that the student was likely to prevail in establishing that the exclusion from the team based on his disability violated Section 504.[80] From the litigation to date on this subject, it appears that children should not be excluded from extracurricular participation solely on the basis of their disabilities unless there are valid health and safety risks.

Children with disabilities, however, can be subjected to the same criteria applied to nonhandicapped children in qualifying for interscholastic athletic teams. They can be required to satisfy skill, academic, age, and residency requirements. In an illustrative case, an Oklahoma student with disabilities was unsuccessful in challenging a policy that denied interscholastic participation to any student who reached his nineteenth birthday prior to September 1. The court reasoned that the policy was justified because older athletes could pose a danger to the safety of younger and less mature students.[81]

Under special circumstances, however, a child with a disability may be granted an exemption from regulations governing interscholastic sports. In a Texas case, a student was successful in securing a waiver from a requirement that transfer students, whose parents or guardians do not reside in the district, are ineligible for varsity sports for one year after the transfer. The court concluded that the student, who was qualified to participate on the football team, had a "compelling necessity" to live apart from his parents and a "compelling need" to participate in varsity football.[82] Concluding that being on the football team was an integral part of his educational progam, the court enjoined the school district from barring his participation.

Student Records

Students records are particularly sensitive in connection with disabled children because they are subjected to more tests, evaluations, and observations than are nondisabled children. The Family Educational Rights and Privacy Act (FERPA) requires education agencies to provide parents access to their child's educational records and prohibits the dissemination of students' educational records (with certain exceptions) to third parties without parental permission.[83] Upon reaching the age eighteen, students have the same rights to access as their parents. Federal funds can be withdrawn from school districts that fail to comply with certain provisions of FERPA. The IDEA contains similar provisions pertaining to the confidentiality and accessibility of handicapped students' records. If necessary, interpreters must be hired to translate the contents of students' files for parents.

A teacher's daily records which are kept in the sole possession of the faculty member are not considered educational records for purposes of FERPA and the IDEA. Also certain directory information (e.g., name, address, date of birth, degrees, and awards received) can be released without parental consent. In addition, federal and state authorities can have access to student data needed to audit and evaluate federally supported educational programs. Such data, however, must be collected in a manner that prevents the disclosure of personally identifiable information. Records can also be disclosed if subpoenaed by a court.

Records kept by physicians, psychiatrists, psychologists, or other professionals who are treating specific children with disabilities are not considered educational records if such reports are not available to other persons and are not kept in the students' school records. However, psychological evaluations and other assessments conducted by school personnel are considered educational records and are subject to accessibility and confidentiality requirements specified in FERPA and the IDEA. A parent or eligible student who disagrees with the content of any record can request that the material be removed and is entitled to a hearing if school authorities determine that the contested material should be retained. In situations where the hearing officer rules that the records should not be amended, the parent or eligible student has the right to place in the file a statement specifying objections.

Conclusion

Public school administrators are expected to exercise reasonable judgment and to be knowledgeable of the law in carrying out their professional duties. As noted throughout this paper, administrators cannot plead "ignorance" as a valid defense for violating clearly established legal mandates. Several sources are available to assist administrators in staying abreast of legal developments. For example, Education Week highlights significant judiciai and legislative activity that has taken place during the preceding week. The National Organization on Legal Problems of Education publishes a monthly newsletter, a monthly summary of recent cases, and monographs on various topics (e.g., legal issues in special education). For those desiring more extensive coverage of litigation and legislation affecting children with disabilities, The Education for the Handicapped Law Report provides on a biweekly basis comprehensive coverage of legal activity affecting such children. Also, the Education Law Provider, published biweekly by West Publishing Company, provides commentary on selected topics as well as the full text of all cases pertaining to education.

While administrators are expected to comply with the law, they should not feel threatened or confined by the escalating number of legal requirements. Building administrators retain a great deal of discretion in making substantive judgments about the instructional program and student discipline. The majority of the legal requirements are procedural and impose few steps that good administrators are not already following. For example, conscientious principals always have provided students with the opportunity to refute charges before imposing disciplinary sanctions. Also, most principals have ensured that students receive adequate notice of instructional requirements before benefits (e.g., promotion or a high school diploma) are withheld for failure to meet the requirements.

Administrators would be wise to document their activities, including the rationale for decisions, as such documentation can be extremely helpful if particular actions are challenged. With evidence that instructional and disciplinary decisions are grounded in legitimate educational considerations, principals should have little fear of judicial intervention. Courts are hesitant to overturn judgments made by building administrators who are acting in good faith and in the best interests of students.

FOOTNOTES

1. This paper builds in part on Martha McCarthy and Nelda Cambron-McCabe, Public School Law: Teachers' and Students' Rights, 3rd ed. (Boston: Allyn and Bacon, 1992), chapters 3, 4, 5, and 6.

2. Wood v. Strickland, 420 U.S. 308 (1975).

3. 419 U.S. 565 (1975).

4. Ingraham v. Wright, 430 U.S. 651 (1977).

5. Carey v. Piphus, 435 U.S. 247 (1978).

6. Debra P. v. Turlington, 644 F.2d 397 (5th Cir. 1981).

7. 347 U.S. 483 (1954).

8. For a discussion of the three equal protection tests, see McCarthy and Cambron-McCabe, Public School Law, pp. 147-150.

9. Bester v. Tuscaloosa City Bd. of Educ., 722 F.2d 1514 (11th Cir. 1984); Bond v. Keck, 616 F. Supp. 565 (E.D. Mo. 1985).

10. Lau v. Nichols, 414 U.S. 563 (1974).

11. Tinker v. Des Moines Independent School Dist., 393 U.S. 503 (1969).

12. Bethel School Dist. No. 403 v. Fraser, 478 U.S. 675 (1986).

13. Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988).

14. Board of Educ., Island Trees Union Free School Dist. No. 26 v. Pico, 457 U.S. 853 (1982); Virgil v. School Bd. of Columbia County, Florida, 862 F.2d 1517 (11th Cir. 1989).

15. See Stone v. Graham, 449 U.S. 39 (1980); School Dist. of Abington Township v. Schempp, 374 U.S. 203 (1963).

16. See Board of Educ. of the Westside Community Schools v. Mergens, 110 S.Ct. 2356 (1990), interpreting the Equal Access Act, 20 U.S.C. § 4071 (1988).

17. Smith v. Board of School Comm'nrs of Mobile County, 655 F. Supp. 939 (S.D. Ala. 1987), rev'd, 827 F.2d. 684 (11th Cir. 1987); Grove v. Mead School Dist., 753 F.2d 1528 (9th Cir. 1985), cert. denied, 474 U.S. 826 (1985).

18. West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943); Spence v. Bailey, 465 F.2d 797 (6th Cir. 1972); Moody v. Cronin, 484 F. Supp. 2707 (C.D Ill. 1979); Valent v. New Jersey State Bd. of Educ., 274 A.2d 832 (N.J. Super. Ct. 1971).

19. Grove v. Mead School Dist., 753 F.2d 1528 (9th Cir. 1985), cert. denied, 474 U.S. 826

(1985).

20. Mozert v. Hawkins County Public Schools, 827 F.2d 1058 (6th Cir. 1987), cert. denied, 484 U.S. 1066 (1988).

21. Wood v. Strickland, 420 U.S. 308 (1975).

22. See Torres v. Little Flower Children's Services, 485 N.Y. S.2d. 15 (N.Y. 1984), cert. denied, 474 U.S. 864 (1985); Doe v. Board of Educ. of Montgomery County, 453 A.2d 814 (Md. 1982); D.S.W. v. Fairbanks North Star Borough School Dist., 628 P.2d 554 (Alas. 1981); Donohue v. Copiague Union Free Schools, 391 N.E. 2d 1352 (N.Y. 1979); Hoffman v. Board of Educ., 424 N.Y.S.2d 376 (N.Y. 1979).

23. See Perry Zirkel, "Educational malpractice: Cracks in the Door?" Education Law Reporter, vol. 23 (1985) , pp. 453-460; Julie O'Hara, "The Fate of Educational Malpractice," Education Law Reporter, vol. 14 (1984), pp. 887-895.

24. Pesce v. J. Sterling Morton High School Dist., 830 F.2d 789 (7th Cir. 1987); State of Indiana v. Slisher, No. 7151 (Ind. Cir. Ct., Starke County, 1987).

25. In Dellmuth v. Muth, 491 U.S. 223 (1989), the Supreme Court held that Congress did not specifically abrogate states' eleventh amendment immunity against federal law suits when it enacted the Education for All Handicapped Children Act. Responding to this decision, in 1990 Congress stipulated in the IDEA that states are not immune from federal suit for abridging the Act. Thus, states as well as individual school districts can be sued for IDEA violations.

26. In re David "JJ", 517 N.Y.S.2d 606 (App. Div. 1987).

27. Smith v. Philadelphia School Dist., 679 F. Supp. 479 (E.D. Pa. 1988).

28. Timothy W. v. Rochester School Dist., No. C-84-733-L (D.N.H. 1988), rev'd, 875 F.2d 954 (1st Cir. 1989), cert. denied, 110 S. Ct. 519 (1989).

29. See Doe v. Dolton Elementary School Dist. No. 148, 694 F. Supp. 440 (N.D. Ill. 1988); Robertson v. Granite City Community School Dist. No. 9, 684 F. Supp. 1002 (S.D. Ill. 1988); Phipps v. Saddleback Valley Unified School Dist., 251 Cal. Rptr. 720 (Cal. Ct. App. 1988); Ryan White v. Western School Corp., 507 E.H.L.R. 239 (Ind. Cir. Ct. 1986).

30. Doe, id., slip opinion, p. 6. See also Robertson, id.; Ray v. School Dist. of Desoto County, 666 F. Supp. 1524 (M.D. Fla. 1987); Ryan White, id.

31. Martinez v. School Bd. of Hillsboro County, Florida, 861 F.2d 1502 (11th Cir. 1988), on remand, 711 Supp. 1066 (M.D. Fla. 1989).

32. Thomas v. Atascadero Unified School Dist., 662 F. Supp. 376 (C.D. Cal. 1987).

33. Robertson v. Granite City Community School Dist. No. 9, 684 F. Supp. 1002 (S.D. Ill. 1988). See also Doe v. Belleville Public School Dist. No. 118, 672 F. Supp. 342 (S.D. Ill. 1987).

34. Lake Washington School Dist. No. 414, Case No. 10841039, Office for Civil Rights, June 28, 1985.

35. Evans v. Dist. No. 17 of Douglas County, Nebraska, 841 F. 2d 824 (8th Cir. 1988).

36. 20 U.S.C. § 1415 (e) (3).

37. See Laura v. Providence School Bd., 680 F. Supp. 66 (D.R.I. 1988); Devries v. Fairfax County School Bd., 674 F.Supp. 1219 (E.D.Va. 1987). The Education for All Handicapped Children Act was amended in 1986 to allow courts the discretion to award reasonable attorneys' fees to parents who prevail in hearings or court actions (Handicapped Children's Protection Act of 1986, 20 U.S.C. § 1415). This amendment is significant because without the possibility of receiving attorneys' fees, parents would be discouraged from bringing suit under the federal law.

38. Doe v. Rockingham County School Bd., 658 F. Supp. 403 (W.D. Va. 1987). See also Mrs. W. v. Tirozzi, 832 F.2d 748 (2d Cir. 1987).

39. 548 U.S. 176 (1982).

40. Id. at 200.

41. Id. at 207.

42. Evans v. Dist. No. 17 of Douglas County, Nebraska, 841 F.2d 824 (8th Cir. 1988).

43. David D. v. Dartmouth School Comm., 775 F. 2d 411 (1st Cir. 1985), cert denied, 475 U.S. 1140 (1986); Geis v. Board of Educ. of Parsippany-Troy Hills, 774 F.2d 575 (3d Cir. 1985).

44. Nelson v. Southfield Public Schools, 384 N.W. 2d 423 (Mich. App. 1986).

45. Department of Educ. v. Katherine D., 727 F.2d 809 (9th Cir. 1983), cert. denied, 471 U.S. 1117 (1985).

46. Rouse v. Wilson, 675 F. Supp. 1012 (W.D. Va. 1987); Garrick B. v. Curwensville Area School Dist., 669 F. Supp. 705 (M.D. Pa. 1987).

47. Wilson v. Marana Unified School Dist. No. 6 of Pima County, 735 F. 2d 1178, 1183 (9th Cir. 1984).

48. A.W. v. Northwest R-1 School Dist., 813 F. 2d 158 (8th Cir. 1987).

49. Parks v. Pavkovic, 753 F.2d 1397 (7th Cir. 1985), cert. denied, 474 U.S. 919 (1985); Geis v. Board of Educ. of Parsippany-Troy Hills, 774 F.2d 575 (3d Cir. 1985); David D. v. Dartmouth School Comm., 775 F. 2d 411 (1st Cir. 1985), cert. denied, 475 U.S. 1140 (1986); Diamond v. McKenzie, 602 F. Supp. 632 (D.D.C.1985); North v. District of Columbia Bd. of Educ. 471 F. Supp. 136 (D.D.C. 1979); In the Matter of Suzanne, 381 N.Y.S.2d 628

(Family Ct., Westchester County, 1976).

50. Kerkam v. District of Columbia Bd. of Educ., 672 F. Supp. 519 (D.D.C. 1967); Vander Malle v. Ambach, 667 F. Supp. 1015 (S.D.N.Y. 1987); North, id.

51. Clovis Unified School Dist. v. California Office of Admin. Hearings, 903 F.2d 635 (9th Cir. 1990). See also Corbett v. Regional Center for the East Bay, Inc., 676 F. Supp. 964 (N.D. Cal. 1988) (residential placements made by community agencies based on noneducational needs of handicapped children are not subject to the IDEA).

52. 471 U.S. 359 (1985).

53. Board of Educ. of the County of Cabell v. Dienelt, 843 F.2d 813 (4th Cir. 1988).

54. Hudson v. Wilson, 828 F.2d 1059 (4th Cir. 1987).

55. Cain v. Yukon Public Schools, 775 F.2d 15 (10th Cir. 1985).

56. Evans v. Dist. No. 17 of Douglas County, Nebraska, 841 F.2d 824 (8th Cir. 1988).

57. Antkowiak v. Ambach, 838 F.2d 635 (2d Cir. 1988).

58. Georgia Ass'n of Retarded Citizens v. McDaniel, 716 F.2d 1565 (11th Cir. 1983), cert. denied, 469 U.S. 1228 (1985); Battle v. Commonwealth of Pennsylvania, 629 F.2d 269 (3d Cir. 1980), cert. denied, 452 U.S. 968 (1981).

59. Cordrey v. Euckert, 917 F.2d 1460 (6th Cir. 1990), cert. denied, 111 S. Ct. 1391 (1991).

60. Related services include speech pathology and audiology, psychological services, physical and occupational therapy, recreation, rehabilitation counseling, social work services, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only.

61. A.A. v. Cooperman, 526 A. 2d 1103 (N.J. Super. App. Div. 1987).

62. Barwacz v. Michigan Department of Educ., 681 F. Supp. 427 (W.D. Mich. 1988); McNair v Cardimone, 676 F. Supp. 1361 (S.D. Ohio 1987).

63. Irving Independent School Dist. v. Tatro, 468 U.S. 883 (1984).

64. Doe v. Anrig, 651 F. Supp. 424 (D. Mass. 1987). See also Papacoda v. State of Connecticut, 528 F. Supp. 68 (D. Conn. 1981); In the Matter of "A" Family, 602 P.2d 157 (Mont. 1979).

65. Detsel v. Board of Educ. of Auburn Enlarged City School Dist., 820 F.2d 587 (2d Cir. 1987), cert. denied, 484 U.S. 981 (1987).

66. Bevin H. v. Wright, 666 F. Supp. 71 (W.D. Pa. 1987).

67. See School Bd. of the County of Prince William, Virginia v. Malone, 762 F.2d 1210 (4th Cir. 1985); Kaelin v. Grubbs, 682 F.2d 595 (6th Cir. 1982); S-1 v. Turlington, 635 F. 2d 342 (5th Cir. 1981), cert. denied, 454 U.S. 1030 (1981).

68. See S-1, id. ; Pascagoula Municipal Separate School Dist. v. Doe, 508 So. 2d 1081 (Miss. 1987).

69. 484 U.S. 305 (1988).

70. See Doe v. Rockingham County School Bd., 658 F. Supp. 403 (W.D. Va. 1987); Steven Goldberg, "Discipline, Disability, and Disruptive Students," Education Law Reporter, vol. 44 (1988), pp. 495-500.

71. Dickens v. Johnson County Bd. of Educ., 661 F. Supp. 155 (E.D. Tenn. 1987); Hayes v. Unified School Dist. No. 377, 669 F. Supp. 1519 (D. Kan. 1987).

72. Cole v. Greenfield-Central Community Schools, 657 F. Supp. 56 (S.D. Ind. 1986).

73. Larry P. v. Riles, 793 F.2d 969 (9th Cir. 1984).

74. Parents in Action on Special Education v. Hannon, 506 F. Supp. 831 (N.D. Ill. 1980).

75. See Debra P. v. Turlington, 644 F.2d 397 (5th Cir. 1981), on remand, 564 F. Supp. 177 (M.D. Fla. 1983), aff'd, 730 F.2d 1405 (11th Cir. 1984).

76. Board of Educ. of Northport-East Northport School Dist. v. Ambach, 457 N.E.2d 775 (N.Y. 1983), cert. denied, 465 U.S. 1101 (1984); Anderson v. Banks, 540 F. Supp. 761 (S.D. Ga. 1982).

77. Brookhart v. Peoria School Dist., 679 F.2d 179 (7th Cir. 1983).

78. Kampmeier v. Nyquist, 553 F.2d 296 (2d Cir. 1977).

79. Kampmeier v. Harris, 411 N.Y.S. 2d 744 (App. Div. 1978).

80. Grube v. Bethlehem Area School Dist., 550 F. Supp. 418 (E.D. Pa. 1982).

81. Mahan v. Agee, 652 P. 2d 765 (Okla. 1982).

82. Doe v. Marshall, 459 F. Supp. 1190 (S.D. Tex. 1978). See Stephen Thomas, Legal Issues in Special Education (Topeka, KS: National Organization on Legal Problems of Education, 1988), p. 61.

83. 20 U.S.C. § 1232 (g); 34 C.F.R. § 99 et. seq.