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ABSTRACT

One of the more controversial issues that has come before the courts since the implementation of the Individuals with Disabilities Act (IDEA) concerns the imposition of disciplinary sanctions on students with disabilities. Because this issue is not directly addressed by the act, school administrators must turn to case law for guidance. This paper reviews court litigation and IDEA provisions to develop guidelines for administrators in this situation. Although IDEA does not directly refer to discipline, its provisions have implications for the application of disciplinary sanctions on special education students. The case law of the last 2 decades clearly strikes a balance between students' rights and school administration authority. School officials may impose disciplinary sanctions as long as they follow procedures that will not deprive special-education students of their rights. Restrictions are placed on school authorities, however, when they wish to expel the student or change the student's placement for disciplinary reasons. In these situations, the due-process procedures outlined in IDEA usually replace the normal due-process protections. In conclusion, it is better to anticipate a problem and prevent one from escalating. An appropriate individual education program (IEP) should be developed that contains goals, objectives, and methods for behavior modification. Contains 49 end notes. (LMI)

DISCIPLINARY SANCTIONS FOR STUDENTS WITH SPECIAL NEEDS

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Unfortunately students in today's schools are not always perfectly well-behaved. From time to time school administrators must take disciplinary action. Some of these disciplinary actions result in a loss of privileges for the student but do not result in a loss of educational opportunity. Sometimes more severe sanctions, that do result in a loss of educational privileges, are necessary. Suspensions and expulsions have been used by school officials as disciplinary sanctions for many years. Generally a suspension is defined as a short-term exclusion and an expulsion as a long-term exclusion from school. For practical purposes a suspension longer than 10 days is treated as an expulsion.

The U.S. Supreme Court, in Goss v. Lopez,[1] has held that students may be suspended and expelled from school as long as they are afforded certain due process safeguards. At a minimum, suspensions of 10 days or less require informal notice of the charges and the opportunity for some sort of hearing. If the student denies the charges, the student must be told of the evidence and given the opportunity for rebuttal. These standards are flexible depending on the nature and severity of the infraction and the intended punishment. Stricter adherence to

due process is required for more severe infractions and penalties. Suspensions of more than 10 days or expulsions would require more due process.[2] For example, a student facing expulsion should be given a quasi-judicial hearing that would include the right to be represented by counsel and the opportunity to present and cross-examine witnesses.

Students with disabilities facing disciplinary sanctions have additional rights that place extra due process requirements on school officials. Since an expulsion results in a deprivation of educational opportunity, and possibly a deprivation of the rights guaranteed by the Individuals with Disabilities Education Act (IDEA),[3] further safeguards must be employed. IDEA makes little mention of discipline; however, many of its provisions have implications for the disciplinary process.[4] The U.S. Supreme Court, in Honig v. Doe,[5] has suggested that IDEA was passed to prevent school districts from excluding students whose disabilities resulted in behavior problems.

EXPULSION IS A CHANGE IN PLACEMENT

Courts have consistently held that school districts may not impose the severe disciplinary sanction of expulsion on a student with disabilities unless additional due process procedures have been provided to the student. Almost as soon as IDEA was implemented, a case in which a school district intended to expel a special education student found its way to the court system.[6] The student, who had a history of behavior problems, had been suspended for 10 days as a result of her involvement in school-

wide disturbances. The superintendent recommended that she be expelled for the remainder of the school year, but her attorney initiated administrative appeals under IDEA. The attorney then argued in court that an expulsion, while administrative appeals were pending, would violate IDEA's status quo provision.[7] The district court in Connecticut agreed, holding that an expulsion was a change in placement and that a change in placement could take place only after IDEA's procedures have been followed.[8] Several other courts also have held that an expulsion, since it results in the termination of all educational services, is a change in placement.[9] Under these rulings a school district is required to treat an expulsion as it would any other change in placement.

The Ninth Circuit Court of Appeals has outlined the additional due process procedures a school district must follow when attempting to expel a student with disabilities.[10] According to the court, written notice must be given to the parents, the evaluation and placement team must be convened to determine the reason for the misconduct and consider the appropriateness of the current placement, an evaluation of the student's current educational needs must be conducted, the parents must be informed of their rights to appeal, and the student must be allowed to remain in the then current placement until all issues are resolved.

An Indiana district court stated that it was clear that Congress, in passing IDEA, intended to limit a school district's

right to expel a student with disabilities.[11] That sentiment has been echoed by the U.S. Supreme Court which stated that when Congress passed IDEA it intended to strip schools of the authority they previously had to exclude disabled students, particularly those with emotional difficulties.[12] Agreeing that an expulsion is a change in placement, the high Court held that IDEA's status quo provision prevented the exclusion of students with disabilities for disruptive behavior.

MANIFESTATION OF THE DISABILITY DOCTRINE

The federal district court in Indiana held that a school district may not expel a special education student whose misbehavior is caused by the disability, but may expel the student if the misbehavior is not caused by the disability.[13] The court emphasized, however, that this determination must be made through IDEA's change in placement procedures. The Fifth Circuit Court of Appeals agreed with this principle, adding that the determination of whether the misconduct was a manifestation of the student's disability must be made by a specialized and knowledgeable group of persons.[14] That court also placed the burden on school officials to raise the question of whether the misconduct is a manifestation of the disability.

Establishing the nexus between a student's misbehavior and disability is not a difficult task. The Fourth Circuit Court of Appeals held that such a connection did exist even though a committee of special education professionals determined that a relationship between the student's disability and misbehavior did

not exist.[15] The student was classified as learning disabled but his Individualized Education Program (IEP) indicated that he had borderline intelligence and had difficulty behaving. He was expelled after he acted as a go-between in several drug transactions. When the dispute over the expulsion reached the court level, the trial court found that the student's learning disabilities caused him to have a poor self image which caused him to seek peer approval by acting as the go-between in the drug transactions. The court also found that his learning disabilities prevented him from understanding the consequences of his actions. The appeals court affirmed, holding that the district court's finding was not clearly erroneous. The appeals court added that to allow an expulsion in such an instance would not be fair or in keeping with IDEA since the student would be expelled for behavior over which he had no control.

PROVISION OF SERVICES DURING AN EXPULSION

Even if school officials are able to establish that a nexus between the student's disability and misconduct does not exist, and thus are able to expel the student, they still may be required to provide special education services during the expulsion period. The Fifth Circuit Court of Appeals held that even when the proper procedures are used under the proper circumstances, and a student is expelled, a complete cessation of educational services during the expulsion period is not authorized.[16]

However, the Ninth Circuit Court of Appeals held that when a student with disabilities is properly expelled, the school district may cease providing all educational services, just as it could in any other case.[17] To do otherwise, according to the court, would amount to asserting that all acts of a child with disabilities are attributable to the disability. Although the U.S. Supreme Court heard an appeal of this case, it did not review this aspect of the circuit court's decision.

The U.S. Department of Education, however, has issued policy letters expressing the view that the IDEA requirement that a free appropriate public education be provided to all students with disabilities applied to students serving long term suspensions or expulsions resulting from misconduct that was not a manifestation of their disabilities.[18] According to these letters, it appears that the Department of Education agrees with the Fifth Circuit's interpretation of IDEA's requirements in this regard. Although these policy letters are advisory, school officials should provide special education services to any students with disabilities who have been expelled.

TRANSFER TO AN ALTERNATE PLACEMENT

School districts may, however, transfer a disruptive student to an alternate, even more restrictive, placement if the student's behavior interferes with the education of others or creates a dangerous situation. A comment to IDEA's least restrictive environment regulations indicates that where a student with disabilities is so disruptive in the regular

classroom that the education of other students is significantly impaired, the needs of the student with disabilities cannot be met in that environment and a regular class placement may not be appropriate.[19] In spite of the recent emphasis on inclusion, most courts agree that a disruptive student's effect on the operation of a general education classroom can be considered when determining the least restrictive environment for that student.[20]

The district court in Connecticut stated that students with disabilities are not immune from discipline and are not entitled to participate in programs if their behavior disrupts the educational process for others.[21] The court indicated that school authorities may change the placement of a disruptive student to a more restrictive one by following procedures consistent with IDEA. The Fourth Circuit Court of Appeals also stated that when the student's disruptive behavior is caused by the disability, consideration should be made for a change in educational placement.[22] One court, stressing that nothing in IDEA deprives school officials of their ever-present right to maintain order and discipline, has even suggested that the change in placement could occur involuntarily.[23]

The U.S. Supreme Court, stating that school officials are not left powerless to deal with dangerous students, has suggested that school officials may seek to reach an agreement for an alternate placement with the parents of a student who poses a safety risk to others.[24] If the parents adamantly refuse to

consent to the change in placement, school officials may seek the aid of the courts. The Court has ruled that in this situation, school officials may not be required to exhaust their administrative remedies prior to bringing court action. In appropriate cases the courts could issue a temporary order preventing a dangerous student from attending school. The courts also could order a temporary alternate placement, such as homebound instruction. However, the burden clearly is on school authorities to show that the student is dangerous and that no other alternative except exclusion is feasible.

EXCLUSION PENDING PLACEMENT REVIEW PROCEEDINGS

As indicated in the section above, the U.S. Supreme Court has ruled that courts may enjoin dangerous students from attending school if the school district and parents cannot agree on an alternate placement. If the school district and parents cannot reach an agreement, the administrative appeals process would be set in motion. The Supreme Court's ruling gives the courts the authority to issue a temporary order regarding the student's educational situation until those proceedings are final. Although the school district would not be required to exhaust administrative remedies prior to seeking such a temporary order, the permanent placement dispute still would be subject to the administrative process.

In a case that was decided three years before the Honig decision, a district court in Mississippi upheld a school district's refusal to allow a student who had engaged in

disruptive sexual conduct to return to school.[25] The student initially had been suspended, but during his suspension he was placed by the youth court in a state hospital. Upon his release he attempted to return to school but school officials proposed a placement in a private facility. The student rejected all offered options and initiated due process appeals. He claimed that during the pendency of those proceedings he was entitled to return to his former public school placement. The school district, citing a possible danger to other students due to his psycho-sexual disorder, refused to readmit him. The district court held that the school district's actions were reasonable and did not violate IDEA. The appeals court affirmed.

A district court in Texas issued an order enjoining a student it found to be dangerous from attending general education classes after the student's parents rejected a proposal that the student attend a behavior management class.[26] School officials testified that the student had committed numerous behavioral infractions, including assaults on students and teachers, destruction of school property, self-injurious acts, use of profanity, and making threats to kill himself and others. The court ruled that pending completion of administrative hearings, the student could either attend the recommended behavior management class or receive homebound instruction.

SUSPENSIONS

Although the courts have put restrictions on a school district's authority to expel a student with disabilities, they

have consistently held that less harsh forms of discipline, such as suspensions, may be imposed without any additional due process safeguards. The district court in Connecticut, while holding that an expulsion was a change in placement, stated that school authorities could temporarily suspend students with disabilities who were disruptive.[27] In several of the other expulsion decisions, the courts have indicated that short suspensions are not subject to IDEA's change in placement requirements.[28]

In a case in which a brief suspension was imposed on a student for verbally abusing a teacher, a district court in Illinois specifically held that a suspension was not a change in placement.[29] Characterizing a suspension as a sanction designed to teach the student, the court found that the loss of classwork during the suspension period did not outweigh the educational value of the suspension.

The U.S. Supreme Court ruled that school districts may suspend a student with disabilities for up to 10 days if the student poses an immediate threat to the safety of others.[30] The Court suggested that the suspension could provide a cooling down period during which school authorities and the parents could work out an agreement for an alternate, more appropriate, placement. The suspension period provides school administrators with the authority to immediately remove a dangerous student to protect the safety of others.[31] Unfortunately, the Court did not specify whether the 10-day limit on suspensions was cumulative within one year or consecutive. This question,

however, is generally addressed through state policies.[32] In the absence of specific state law policies or guidelines, school administrators would be prudent to view the 10-day limit as cumulative. This view would be consistent with a long line of case law that treats serial suspensions as expulsions.

Courts have consistently held that an expulsion by any other name is still an expulsion. Suspensions are defined as short-term exclusions from school and expulsions as long-term exclusions. Tradition holds that anything over 10 days procedurally is the equivalent of an expulsion. The U.S. Supreme Court, in the Goss decision discussed at the beginning of this paper, indicated that greater due process would be required for suspensions of more than 10 days.

The district court in Indiana stated that the prohibition against expulsions included informal expulsions, such as indefinite suspensions.[33] By the same token the Supreme Court of Nebraska held that sending a student home and telling his parents that he could not return constituted an expulsion.[34] An Ohio district court held that a suspension of several months, even when home tutoring was provided during the suspension period, was a change in placement.[35] The court indicated that suspensions of one or two weeks would have been acceptable.

The above court decisions do not require school authorities to provide any due process safeguards over and above those outlined in the Goss v. Lopez decision. Thus, when it comes to a

suspension, a student with disabilities may be treated in the same manner as any other student.

OTHER DISCIPLINARY SANCTIONS

It is not uncommon for school officials to place a continually disruptive student on a reduced day schedule under the theory that the student's misbehavior is due to an inability to tolerate a full day of instruction. The Ninth Circuit Court of Appeals held that a reduction in the schedule of a special education student for disciplinary purposes was a change in placement subject to IDEA's procedures.[36] The student had been placed on a half-day schedule following several incidents of misconduct. Although his guardians agreed to the reduction in schedule, it was accomplished without providing the full due process safeguards required by IDEA for a change in placement.

A district court in Indiana, a state that authorizes corporal punishment, held that paddling a student with disabilities, taping his mouth, and providing him with an isolated seating arrangement did not violate his rights.[37] Finding that these punishments were not excessive and were within school officials' common law privileges, the court stated that school officials were entitled to substantial discretion in handling day-to-day discipline. Noting that the student in this case received the same punishment any other child would have, the judge remarked, "An elementary school cannot be subjugated by the tyrannical behavior of a nine-year old child."[38]

Many special education teachers commonly employ a technique known as "time-out" as part of a behavior modification program. Time-out refers to the removal of a child from a setting for a specified and limited period of time. Generally, the student is placed in a secluded area of the classroom set aside for this purpose or a separate time-out room. The Tenth Circuit Court of Appeals held that such a short-term disciplinary measure as time-out or an in-school suspension does not constitute a change in placement.[39] However, the court did indicate that in-class disciplinary methods, since they were matters relating to the education of the child, were subject to IDEA's administrative appeals process if the parents objected to them. The Eighth Circuit Court of Appeals also has held that an in-school suspension, even when it limits the student's access to special education classes and resources does not violate the student's substantive due process rights.[40] The court noted that an in-school suspension furthered the school district's legitimate interest in maintaining order and discipline.

While the above paragraphs indicate that IDEA does not limit a school district's right to use normal disciplinary sanctions, short of expulsion, with a special education student, it should be noted that state policies may impose some restrictions. For example, some states may limit the number of days a student may be placed on an in-school suspension if the student is not allowed to attend special education classes during the suspension period. If the student is being deprived of special education

services, the state may treat an in-house suspension in the same manner as an out-of-building suspension so that it would count toward the 10-day limitation placed on suspensions.

A state court in Pennsylvania held that an in-school suspension amounted to a de facto or constructive suspension because the student chose to go home rather than report for the in-school suspension.[41] The court reasoned that since school officials continued to assign in-school suspensions after it became abundantly clear that the student would opt to go home, they knew that an in-school suspension would result in the student's exclusion. Since the total number of days the student was excluded from school exceeded the maximum allowed by state law, the court held that school officials acted contrary to the mandates of IDEA regarding student exclusions.

TREATMENT OF STUDENTS UNDERGOING AN EVALUATION

It is obvious from the above that students who have been identified as disabled are entitled to the additional due process protections of IDEA when harsh disciplinary sanctions may be imposed that would affect the delivery of special education services. The question has arisen as to how students who are undergoing an evaluation, but have not yet been classified as disabled, are to be treated.

This issue arose in an early Connecticut case that was settled by a consent decree agreed to by the parties to the litigation. The consent decree stipulated that a child undergoing an evaluation would be treated in a similar manner as

a child already identified as disabled.[42] However, about the same time a district court in Minnesota, noting that IDEA's procedures are designed to minimize the risk of misclassifying students, held that to treat a student suspected of being disabled as disabled would violate the law.[43] Since the student in this case had not been identified as disabled, the court ruled that school officials had no obligation to treat her as a special education student when imposing disciplinary sanctions.

However, the disciplinary process may not interfere with a student's right to be evaluated and identified. In other words if a student undergoing an evaluation is disciplined, the evaluation may not be halted during the disciplinary period.[44] Also, as soon as school officials are aware that a student is disabled, they have an obligation to provide the student with the full protections of IDEA.[45]

The Connecticut consent decree also stipulated that students who are continually disruptive would be referred for an evaluation.[46] Since constant misbehavior may be an indication of an underlying, unidentified disability, this would appear to be a prudent practice in light of the affirmative obligations school districts have under IDEA to locate and identify all students with disabilities.[47]

INDIVIDUALIZED DISCIPLINE PROGRAM

A school district may develop an individualized disciplinary program and incorporate it into a special education student's IEP; however, students with disabilities are not necessarily

entitled to an individualized disciplinary program. The district court in Maryland held that each IEP must be individually tailored to meet the needs of the student, but subject to that requirement, the policies outlined in the student handbook could be made applicable to a student with disabilities.[48]

Although an individualized disciplinary policy may not be required, it is not a bad idea. In the case of a special education student who has a history of behavioral problems, a prudent special educator would clearly spell out in the student's IEP what was expected of the student and what sanctions would be imposed if those expectations were not met. As was seen above, one court has held that in-class disciplinary methods are subject to IDEA's administrative appeals process; however, if school personnel act in accordance with a valid IEP, it is unlikely that their actions will be overturned by a hearing officer or court. As with all special education instructional methods, the behavior management program spelled out in the IEP must be developed according to accepted practices in the field.

EFFECT ON THE JUVENILE COURT

The procedures and requirements outlined in this chapter refer only to disciplinary sanctions imposed by the schools. These court rulings do not affect the ability of the courts to impose sanctions of their own in cases involving criminal complaints. This would even involve actions that may have arisen in the school setting. A family court in New York specifically rejected a parent's contention that the Honig decision divested

it of jurisdiction in a truancy proceeding.[49] The court held that Honig did not divest the courts of subject matter jurisdiction.

SUMMARY

One of the more controversial issues that has come before the courts since the implementation of IDEA concerns the imposition of disciplinary sanctions on students with disabilities. This issue is not directly addressed by the Act or its implementing regulations, thus school administrators must turn to case law for guidance. Although there is no direct reference to discipline in IDEA, many of its provisions, such as those governing a change in placement, have implications for the application of disciplinary sanctions on special education students.

This is a very delicate issue as it pits the duty of school administrators to maintain order, discipline, and a safe environment in schools against the special education students' rights to receive a free appropriate public education in the least restrictive environment. The authority of school officials to maintain discipline should not be undermined. However, a student should not be denied the rights accorded by IDEA if the student's misconduct is caused by the student's disability.

The case law, as it has emerged in the past two decades, clearly strikes an appropriate balance. School officials may impose disciplinary sanctions as long as they follow procedures that will not deprive special education students of their rights.

School officials may impose normal disciplinary sanctions, including suspensions, on special education students by following general procedures and providing normal due process.

Restrictions are placed on school authorities, however, when they wish to impose more drastic sanctions such as an expulsion or attempt to change the student's placement for disciplinary reasons. Basically, in these situations the due process procedures in IDEA replace the normal due process protections.

School district personnel first must determine if the student's offensive behavior was a manifestation of the student's disability. If it was the student may not be expelled. This determination must be made by a specialized and knowledgeable group of persons such as the district's evaluation and placement team. School districts may, however, temporarily suspend a disruptive or dangerous student and attempt to negotiate another, possibly more restrictive, placement with the student's parents. If an alternate placement can be agreed on, the student's placement can be changed.

If the school district and the parents cannot agree on an alternate placement, that disagreement, like any other IEP disagreement, is subject to IDEA's administrative appeals process. If the school district feels that the student is dangerous and does not wish to have the student attend school while awaiting a final administrative determination, the school district may seek court intervention. If the court agrees that the student's presence in school creates a dangerous situation,

the court may enjoin the student from attending school and may order an alternate placement on a temporary basis. However, the school district must show, by a preponderance of the evidence, that the student is dangerous and must be excluded.

If the school district's evaluation and placement team determines that there is no causal connection between the student's disability and misconduct, the student may be expelled. However, during the expulsion period the student must be provided with educational services. This would require the school district to either provide homebound instruction or arrange for an alternate placement.

Although additional requirements are placed on school authorities when disciplining students with disabilities, they have not been left totally hamstrung. School officials may take swift action, in the form of a suspension, to deal with an immediate situation that is deemed dangerous. If a dispute develops between the parents and school district over the appropriate long-term placement, IDEA provides a mechanism to settle that dispute. In the meantime, the courts can provide an immediate short-term solution. However, the school district will bear the burden of showing that the student's exclusion is necessary.

It is far better to anticipate a problem and prevent one from escalating. If a student is known to have disabilities that may result in misbehavior, school officials should take steps to address those problems. An appropriate IEP that specifically

contains goals, objectives, and methods for behavior modification should be developed. Specific recommendations for dealing with disruptive behavior should be included in that IEP. Those recommendations may be consistent with, or even identical to, the procedures outlined in the student handbook; however, as long as they meet the student's individual needs, they are acceptable.

ENDNOTES

1. Goss v. Lopez, 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed.2d 725 (1975).

2. Hudgins, H.C. and Vacca, R.S., Law and Education: Contemporary Issues and Court Decisions (Charlottesville, VA: The Michie Company, 1991).

3. 20 U.S.C. § 1401 et seq.

4. Sorensen, G., "Update on Legal Issues in Special Education Discipline," 81 Ed.Law Rep. 399 (1993).

5. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

6. Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978).

7. 20 U.S.C. § 1415(e)(3). [A student's placement may not be changed while a hearing is pending without parental consent.]

8. Before a special education student's placement can be changed the school district must notify the parents of their intent to change the placement and give the parents the opportunity to object. If the parents object to the change in placement, and administrative appeals are initiated, the child's placement may not be changed while those proceedings are pending unless the parents agree to the change. 20 U.S.C. §§ 1415(b)(1)(C) and 1415(e)(3).

9. S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981); Blue v. New Haven Board of Education, EHLR 552:401 (D. Conn. 1981); Kaelin v. Grubbs, 682 F.2d 595, 5 Ed.Law Rep. 710 (6th Cir. 1982); Honig v.

Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

10. Doe v. Maher, 793 F.2d 1470, 33 Ed.Law Rep. 125 (9th Cir. 1986), aff'd on other grounds sub nom. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

11. Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979).

12. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

13. Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979).

14. S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981). See also Kaelin v. Grubbs, 682 F.2d 595, 5 Ed.Law Rep. 710 (6th Cir. 1982).

15. School Board of the County of Prince William v. Malone, 762 F.2d 1210, 25 Ed.Law Rep. 141 (4th Cir. 1985).

16. S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981). See also Board of Trustees of Pascagoula Municipal Separate School District v. Doe, 508 So.2d 1081, 40 Ed.Law Rep. 1090 (Miss. 1987).

17. Doe v. Maher, 793 F.2d 1470, 33 Ed.Law Rep. 125 (9th Cir. 1986), aff'd on other grounds sub nom. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

18. New Letter, EHLR 213:258 (OSERS 1989); Davis Letter, 16 EHLR 734 (OSERS 1989); Symkowick Letter, 17 EHLR 469 (OSERS 1991); Smith Letter, 18 IDELR 685 (OSERS 1992).

19. 34 C.F.R. § 300.552 Note.

20. Osborne, A.G., "The IDEA's Least Restrictive Environment Mandate: A New Era," 88 Ed.Law Rep. 541 (1994).

21. Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978).

22. School Board of the County of Prince William v. Malone, 762 F.2d 1210, 25 Ed.Law Rep. 141 (4th Cir. 1985). See also Southeast Warren Community School District v. Department of Public Instruction, 285 N.W.2d 173, (Iowa 1979); Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979).

23. Victoria L. v. District School Board of Lee County, Florida, EHLR 552:265, aff'd 741 F.2d 369, 19 Ed.Law Rep. 478 (11th Cir. 1984).

24. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

25. Jackson v. Franklin County School Board, 606 F. Supp. 152, 24 Ed.Law Rep. 185 (S.D. Miss. 1985), aff'd 765 F.2d 535, 25 Ed.Law Rep. 1080 (5th Cir. 1985).

26. Texas City Independent School District v. Jorstad, 752 F. Supp. 231, 64 Ed.Law Rep. 1064 (S.D. Tex.).

27. Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978).

28. See for example, Doe v. Koger, 489 F. Supp. 225 (N.D. Ind. 1979); Kaelin v. Grubbs, 682 F.2d 595, 5 Ed.Law Rep. 710 (6th Cir. 1982).

29. Board of Education of Peoria v. Illinois State Board of Education, 531 F. Supp. 148, 2 Ed.Law Rep. 1032 (C.D. Ill. 1982).

30. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

31. Osborne, A.G., "Dangerous Handicapped Students Cannot Be Excluded From the Public Schools," 46 Ed.Law Rep. 1105 (1988).

32. For example, Massachusetts has specific requirements school districts must follow when suspensions for a special education student will accumulate to more than 10 days in a school year. These regulations require the evaluation team to reconvene to determine if the student's misconduct is a manifestation of the disability or a result of an inappropriate placement. If the determination is positive in this regard, a new placement must be recommended. If the determination is negative the student may be suspended for more than 10 days but services must continue during the suspension period. 603 C.M.R. 28.00 ¶ 338.0.

33. Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979). See also Sherry v. New York State Education Department, 479 F. Supp. 1328 (W.D.N.Y. 1979).

34. Adams Central School District v. Deist, 334 N.W.2d 775, 11 Ed.Law Rep. 1020 (Neb. 1983), modified 338 N.W.2d 591, 13 Ed.Law Rep. 846 (Neb. 1983).

35. Lamont A. v. Quisenberry, 606 F. Supp. 809, 24 Ed.Law Rep. 772 (S.D. Ohio 1984).

36. Doe v. Maher, 793 F.2d 1470, 33 Ed.Law Rep. 125 (9th Cir. 1986), aff'd on other grounds sub nom. Honig v. Doe, 484 U.S. 305, 108 S. Ct. 592, 98 L. Ed.2d 686, 43 Ed.Law Rep. 857 (1988).

37. Cole v. Greenfield-Central Community Schools, 657 F. Supp. 56, 39 Ed.Law Rep. 76 (S.D. Ind. 1986).

38. Id., 657 F. Supp. at 63, 39 Ed.Law Rep. at 83.

39. Hayes v. Unified School District No. 377, 877 F.2d 809, 54 Ed.Law Rep. 450 (10th Cir. 1989).

40. Wise v. Pea Ridge School District, 855 F.2d 560, 48 Ed.Law Rep. 1098 (8th Cir. 1988).

41. Big Beaver Falls Area School District v. Jackson, 624 A.2d 806, 82 Ed.Law Rep. 861 (Pa. Commw. Ct. 1993).

42. P-1 v. Shedd, EHLR 551:164 (D. Conn. 1979).

43. Mrs. A.J. v. Special School District No. 1, 478 F. Supp. 418 (D. Minn. 1979).

44. Osborne, A.G., An Examination of Handicapped Students' Rights to Education and Appropriate Placement Under Federal Law (Doctoral Dissertation, Boston College: University Microfilms International #8415613, 1984).

45. Doe v. Rockingham County School Board, 658 F. Supp. 403, 39 Ed.Law Rep. 590 (W.D. Va. 1987).

46. P-1 v. Shedd, EHLR 551:164 (D. Conn. 1979).

47. 20 U.S.C. § 1412(2)(C).

48. Pratt v. Board of Education of Frederick County, 501 F. Supp. 232 (D. Md. 1980).

49. In re Thomas W., 560 N.Y.S.2d 227, 62 Ed.Law Rep. 1122 (N.Y. Fam. Ct. 1989).