

DOCUMENT RESUME

ED 438 644

EC 307 666

TITLE Proposed IDEA Regulations. Joint Hearing of the Committee on Labor and Human Resources, United States Senate, and the Committee on Education and the Workforce, House of Representatives, on Examining the Department of Education's Development of the Regulations Necessary To Implement the Individuals with Disabilities Education Act Amendments of 1997 (Public Law 105-17). One Hundred Fifth Congress, Second Session.

INSTITUTION Congress of the U.S., Washington, DC. Senate Committee on Labor and Human Resources.; Congress of the U.S., Washington, DC. House Committee on Education and Labor.

REPORT NO Senate-Hrg-105-563

ISBN ISBN-0-16-057301-7

PUB DATE 1998-04-28

NOTE 96p.

PUB TYPE Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC04 Plus Postage.

DESCRIPTORS *Disabilities; *Discipline Policy; *Educational Legislation; Elementary Secondary Education; Federal Legislation; *Federal Regulation; *Financial Support; Hearings; Opinions; Organizations (Groups); Policy Formation; *Special Education; Student Placement; Suspension

IDENTIFIERS Congress 105th; Individuals with Disabilities Educ Act Amend 1997; *Individuals with Disabilities Education Act

ABSTRACT

This is a transcript from a Joint Hearing of the U.S. Senate Committee on Labor and Human Resources and the U.S. House of Representatives Committee on Education and the Workforce that addresses the U.S. Department of Education's development of regulations necessary to implement the Individuals with Disabilities Education Act (IDEA) Amendments of 1997. It includes opening statements from Senator James Jeffords (R-VT), Representative William Goodling (R-PA), Senator Edward Kennedy (D-MA), Senator Dan Coats (R-IN), Representative Matthew Martinez (D-CA), and Senator Tom Harkin (D-IA). Prepared statements are included from Senator Bill Frist (R-TN), Senator Patty Murray (D-WA), Representative Frank Riggs (R-CA), and Representative Charlie Norwood (R-GA). Presentations are then provided from Judith Heumann, Assistant Secretary for Special Education and Rehabilitation Services, Martha Feland, the President of Cabot School Board in Arkansas, Frank Clark, a school district attorney from Hershey Pennsylvania, Brian McNulty, Colorado Assistant Commissioner of Education, and Patricia McGill Smith, from the National Parent Network on Disabilities. Questions from the members of Congress and answers from the panelists are included. Among issues addressed in the testimony are discipline, suspensions of students with disabilities, funding of IDEA, and alternative placements. (CR)

Reproductions supplied by EDRS are the best that can be made
from the original document.

PROPOSED IDEA REGULATIONS

ED 438 644

JOINT HEARING
OF THE
COMMITTEE ON LABOR AND HUMAN
RESOURCES
UNITED STATES SENATE
AND THE
COMMITTEE ON EDUCATION AND THE
WORKFORCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION

ON
EXAMINING THE DEPARTMENT OF EDUCATION'S DEVELOPMENT OF
THE REGULATIONS NECESSARY TO IMPLEMENT THE INDIVIDUALS
WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997 (PUBLIC
LAW 105-17)

APRIL 22, 1998

Education and Labor Serial No. 105-131

Printed for the use of the Committee on Labor and Human Resources



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1998

48-019 CC

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- Minor changes have been made to improve reproduction quality.

Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-057301-7

EC 301666



COMMITTEE ON LABOR AND HUMAN RESOURCES

JAMES M. JEFFORDS, Vermont, *Chairman*

DAN COATS, Indiana

JUDD GREGG, New Hampshire

BILL FRIST, Tennessee

MIKE DeWINE, Ohio

MICHAEL B. ENZI, Wyoming

TIM HUTCHINSON, Arkansas

SUSAN M. COLLINS, Maine

JOHN W. WARNER, Virginia

MITCH McCONNELL, Kentucky

EDWARD M. KENNEDY, Massachusetts

CHRISTOPHER J. DODD, Connecticut

TOM HARKIN, Iowa

BARBARA A. MIKULSKI, Maryland

JEFF BINGAMAN, New Mexico

PAUL D. WELLSTONE, Minnesota

PATY MURRAY, Washington

JACK REED, Rhode Island

MARK E. POWDEN, *Staff Director*

SUSAN K. HATTAN, *Deputy Staff Director*

WILLIAM G. DAUSTER, *Minority Chief of Staff and Chief Counsel*

(II)

COMMITTEE ON EDUCATION AND THE WORKFORCE

WILLIAM F. GOODLING, Pennsylvania, *Chairman*

THOMAS E. PETRI, Wisconsin
MARGE ROUKEMA, New Jersey
HARRIS W. FAWELL, Illinois
CASS BALLENGER, North Carolina
BILL E. BARRETT, Nebraska
PETER HOEKSTRA, Michigan
HOWARD P. "BUCK" McKEON, California
MICHAEL N. CASTLE, Delaware
SAM JOHNSON, Texas
JAMES M. TALENT, Missouri
JAMES C. GREENWOOD, Pennsylvania
JOSEPH K. KNOLLENBERG, Michigan
FRANK D. RIGGS, California
LINDSEY O. GRAHAM, South Carolina
MARK E. SOUDER, Indiana
DAVID M. McINTOSH, Indiana
CHARLIE W. NORWOOD, JR., Georgia
RON PAUL, Texas
BOB SCHAFFER, Colorado
JOHN E. PETERSON, Pennsylvania
FRED UPTON, Michigan
NATHAN DEAL, Georgia
VAN HILLEARY, Tennessee
JOE SCARBOROUGH, Florida

WILLIAM (BILL) CLAY, Missouri
GEORGE MILLER, California
DALE E. KILDEE, Michigan
MATTHEW G. MARTINEZ, California
MAJOR R. OWENS, New York
DONALD M. PAYNE, New Jersey
PATSY MINK, Hawaii
ROBERT E. ANDREWS, New Jersey
TIM ROEMER, Indiana
ROBERT C. "BOBBY" SCOTT, Virginia
LYNN C. WOOLSEY, California
CARLOS A. ROMERO-BARCELO, Puerto-
Rico
CHAKA FATTAH, Pennsylvania
RUBEN HINOJOSA, Texas
CAROLYN McCARTHY, New York
JOHN F. TIERNEY, Massachusetts
RON KIND, Wisconsin
LORETTA SANCHEZ, California
HAROLD E. FORD, JR., Tennessee
DENNIS KUCINICH, Ohio

Kevin Talley, *Staff Director*
Gail E. Weiss, *Minority Staff Director*

(III)

C O N T E N T S

STATEMENTS

WEDNESDAY, APRIL 22, 1998

	Page
Jeffords, Hon. James M., a U.S. Senator from the State of Vermont	1
Goodling, Hon. William F., a U.S. Congressman from the State of Pennsylvania	2
Kennedy, Hon. Edward M., a U.S. Senator from the State of Massachusetts ...	6
Coats, Hon. Dan, a U.S. Senator from the State of Indiana	8
Martinez, Hon. Matthew G., a U.S. Congressman from the State of California	9
Harzin, Hon. Tom, a U.S. Senator from the State of Iowa	11
Heumann, Judith E., Assistant Secretary For Special Education and Rehabilitative Services, U.S. Department of Education, Washington, DC, accompanied by Jamie Studley, Acting Assistant Secretary, Office of General Counsel, and Thomas Hehir, Director of Special Education Programs	18
Feland, Martha, President, Cabot School Board, Cabot, AR; Frank P. Clark, school district attorney, law offices of James, Smith, Durkin & Connelly, Hershey, PA; Brian A. McNulty, Assistant Commissioner of Education, Colorado Department of Education, Denver, CO; and Patricia McGill Smith, National Parent Network on Disabilities, Washington, DC	51

APPENDIX

Statements, articles, publications, letters, etc.:	
Judith E. Heumann	75
Frank P. Clark	77
Brian A. McNulty	83
National Association of State Directors of Special Education, Inc.	83

(IV)

PROPOSED IDEA REGULATIONS

WEDNESDAY, APRIL 22, 1998

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
AND,
U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON EDUCATION AND THE WORKFORCE,
Washington, DC.

The joint committees met, pursuant to notice, at 10:38 a.m., in room SD-106, Dirksen Senate Office Building, Senator James M. Jeffords (chairman of the Committee) presiding.

Present: Senators Jeffords, Coats, Gregg, Hutchinson, Collins, Kennedy, Harkin, and Reed; Representatives Goodling, McKeon, Souder, Upton, Deal, Payne, Martinez, Roemer, Woolsey, Romero-Barcelo, McCarthy, and Kucinich.

OPENING STATEMENT OF SENATOR JEFFORDS

The CHAIRMAN. The joint hearing of the House and Senate with respect to Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997, will come to order.

As one can readily see from the number of people here, this is an area of considerable concern and importance to the education and disability community. Less than a year ago, Congress passed and the President signed into law P.L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997. It took much of the last Congress and 4 solid months of work in this Congress to produce a strengthened law that would give parents and educators the tools they needed to help children with disabilities receive a quality education. Day after day, the administration, House and Senate Democrats and Republicans sat at the table in an unprecedented effort to achieve consensus on legislation.

The consensus we achieved must be rekindled. The communication and mutual respect that brought us a strong law must be applied in this final phase of the regulatory process. If we do not reestablish last year's partnerships and find common ground, fear, division and efforts to amend IDEA may become more commonplace. That is not good for kids with disabilities nor for the educational system. We have to get things back on track, and that is the reason we are here this morning, to lay out concerns and to discuss with the administration thoughts from witnesses on possible solutions in order to, hopefully, when the final regulations are promulgated, to get back on track.

Actions speak louder than words. Regulation, to work, must reflect clarity and flexibility and be consistent with the law. It is my

(1)

hope that by having a frank and open discussion about the proposed IDEA regulations, we will facilitate the development of final IDEA regulations that are clear, flexible and consistent with the spirit and intent of the 1997 IDEA Amendments and good faith negotiations that led to the new law.

Clear, flexible regulations that are consistent with a statute that everyone can understand will do a great deal to reduce the tension that parents and educators of children with disabilities are now experiencing.

This hearing offers everyone an opportunity to discuss major issues that have arisen since the issuance of the proposed regulations on October 22, 1997. It is my hope that today, we will identify some common ground that will substantially impact on the final regulations of IDEA, lead to new partnerships between parents and educators at the local level, and result in improvement in educational services for students with disabilities.

By holding this joint hearing with my good friend Bill Goodling, chairman of the House Committee on Education and the Workforce, we offer stakeholders an opportunity to tell us their opinions on the proposed IDEA regulations. We have asked witnesses to address specific provisions in the proposed IDEA regulations.

I would like to offer some observations on what could or should guide the development of the final IDEA regulations. First, interpretations of the statute that go beyond statutory text should be limited to clarifications—clarifications that describe a range of ways school districts could comply with a particular provision.

Second, interpretations that have no basis in the 1997 IDEA Amendments should not be included in the final regulations.

And third, policy letters that pre-date June 4, 1997 which the Department believes warrant regulatory status should be extracted from the proposed regulations and reissued for public comment.

Those are my thoughts and, of course, they are open for discussion. I look forward to hearing the department's rationale for these selected regulatory provisions and the views of all witnesses with regard to final disposition of the IDEA regulations. If we can sort out together how the regulations should and must work when in final form, we can fulfill the promise of last year's law. I hope everyone with an interest in children with disabilities and their future will help us find once again the common ground on which we stood together last June.

I want to express the regrets of Senator Frist, who could not be with us and turn now to my good friend Bill Goodling for his opening comments. Senator Kennedy has been held up on the floor.

Mr. Goodling?

OPENING STATEMENT OF REPRESENTATIVE GOODLING

Mr. GOODLING. Good morning. I welcome all of you here for this hearing this morning on the Department of Education's proposed regulations to implement the IDEA Amendments of 1997. I want to thank Senator Jeffords for agreeing to have this joint hearing.

For the Committee on Education and the Workforce, the IDEA Amendments of 1997 were the culmination of over 2 years of work to ensure that all children with disabilities receive a high-quality

education. And by working together on what works—improving basic academics, increasing parental involvement and moving dollars to the classroom—I think we can achieve this goal.

Last year, we worked in a bipartisan and bicameral fashion with the Clinton administration to reform the Individuals with Disabilities Education Act so that children with disabilities can have more educational options and services. For several months last year, we all worked to create this consensus legislation.

The process was truly unique and historic. In my 24 years as a Member of Congress, I know of no authorizing legislation that has ever gone through this kind of bipartisan, bicameral process with representatives of the administration right at the table. Many people came here to Washington at their own expense to participate in our weekly meetings and to suggest changes to IDEA. Many of them are back here with us in the audience today. Their voices strongly influenced the words in this historic legislation.

The result was a good law with broad support. At the time, we pledged to carry this spirit of the cooperation forward into the process of writing regulations for IDEA.

Last year, as a sign of good faith, we invited Assistant Secretary Heumann and her staff to participate on behalf of the administration during last year's negotiating process. The administration's extensive participation in the negotiations of an authorization bill was completely unprecedented for our committee, and probably for the Congress as a whole. Her active negotiations led to a number of particular changes in the language that ultimately became law.

Our inclusion of the administration reflected our belief that the special education law needed a consensus to ensure that the law worked for everyone's interests. In light of the openness extended last year, I must admit that I am very dismayed with the manner in which the administration has treated the Congress in the education of regulations for this unique law.

Subcommittee Chairman Riggs and I have written Secretary Riley on at least two occasions to express our extreme displeasure with the manner in which the Department has developed these regulations. We fully expected to be appraised during the regulatory process, a courtesy that would only be appropriate given the administration's unprecedented participation during the legislative process.

In fact, Secretary Riley responded that, "We will do whatever is necessary to continue this bipartisan effort in the promulgation of the final regulations." While some staff briefings did occur at our request last December, we have received no response to our January 20, 1998 letter, nor have we had any other subsequent contact with the Department.

We have been told that the Department staff is too busy sorting through the comments. While I understand that this places demands on staff time, I am fearful that the administration will repeat what it did when it issued the proposed regulations last October and did not consult with the Congress until they were final and complete. I do not believe this constitutes the agreements we made to continue the bipartisan effort through the regulatory process.

Last year, we also pledged to work for children with special needs, not against them. However, this year, we see that the Presi-

dent is cutting funds for IDEA in his new budget, if you look at inflation and at the thousands of new people who will come into the program. When Congress mandated special education programs in 1975, we promised to pay 40 percent of the excess cost of educating a disabled child. In fact, even with 2 years of unparalleled increases provided by Republican-led Congresses, we currently provide only about 9 percent of this cost.

Let me tell you what that means to a little city like York, PA. They spend \$6 million on special education. We send them \$350,000. You send them 40 percent of the excess cost, and I will guarantee you, they can take care of pupil-teacher ratios, and they can take care of building repairs. They do not need to have us do it if we just put our money where our mouth was 24 or 25 years ago.

We can ensure that both children with disabilities receive a free and appropriate public education and that all children have the best education possible if we just provide fair Federal funding for special education.

With my Republican colleagues in both the Senate and the House, I will fight this year as in the past to see that we continue down the path toward paying our fair share for special education. I sat on the Budget Committee as a member of the minority for 6 years, and Mr. Kildee and I always thought the majority was going to listen to us and do something about the issue, but they never did in all those years.

Last year, the Department also pledged to stick as close as possible to the statute and not impose more burdensome regulations on local schools. However, the Department's proposed regulations clearly exceed the spirit and the letter of the law by over-regulating IDEA.

The wording in this statute is very specific, and I believe that the regulatory interpretations of it should be minimal. That is why I have many concerns about the Department's approach in the proposed regulations. Let me share just a few of them.

First, I believe that in too many cases, the frequent use of notes in the regulations goes well beyond clarification. In fact, many create a new interpretation that differs from the statutory language. The regulations also include as notes literally hundreds of old policies that were not addressed in the 1997 IDEA Amendments. We took specific steps in the Amendments to ensure that policy matters of national importance that were not addressed in the statute would get full and open public consideration. We required that these issues be put through the regulatory process and be open to public comment. The Department appears to be attempting to circumvent these new requirements. As a result, it is denying parents and school personnel the opportunity to have full input on policies that directly affect them.

Second, last year's compromise on the issue of student discipline clearly lays out how schools can discipline students with disabilities and the procedures that must be followed to protect a student's rights. However, the administration has chosen to deviate from the statute in its proposed regulations, thus reopening this very contentious debate.

We need to get back to the common sense agreement reached in the Amendments where children with disabilities whose inappropriate conduct is unrelated to their disability may be disciplined in the same manner as any other child.

Third, I am concerned about the effect on general education. The proposed regulations define a general curriculum for students which sets a dangerous precedent for the Federal Government to begin to dictate curricula. In addition, the IDEA Amendments greatly increase the role of regular education teachers in the education plans for children with disabilities. We wanted them to participate; however, Congress did not envision, as the Department's proposed regulations would suggest, that regulate education teachers often be pulled out of their classrooms for every meeting that occurs regarding a student's education plan. The Department needs to provide flexibility that allows teachers to meet their responsibility in the planning of the child's education, while minimizing their time out of the regular classroom.

Finally, I am concerned about the Department's interpretation of the effective date of new Individualized Education Programs or IEPs. While Title II of the Act states that the new IEP provisions take effect on July 1 of this year, I do not believe that every IEP has to be or could possibly be redone in order to meet this effective date.

The intent of this effective date was to ensure that any new IEPs or revised IEPs after July 1, 1998 meet the new requirements of the law. It is impractical to expect that by this date, all parents and school IEP teams will be able to reach agreements for the more than 5 million IEPs that are currently in effect. This is especially true when the final regulations have not even been published yet.

I know that many others share my concerns, and I understand that numerous groups have contacted Secretary Riley expressing the need to provide some flexibility in implementing these requirements.

We do not want to see the administration ruin a good law through overregulation. I believe that we need to get back to focusing on quality education. We need to be doing more to encourage the use of alternative methods for resolving disputes contained in the statute, such as mediation, instead of always costly and time-consuming litigation. We need to be looking for ways to decrease the amount of paperwork instead of adding to it. And finally, we need common sense regulation that all the stakeholders can live with and that will allow schools and parents to work together so that every child, regardless of disability, has the opportunity to realize his or her fully potential.

I believe that this hearing offers everyone an opportunity to discuss the critical issues arising from these regulations. I look forward to hearing from the Assistant Secretary and the other witnesses on how the final regulations can improve special education. Through the testimony and dialogue we hear today, I hope that we can identify some common ground that will substantially impact the final regulations and get us back on track to improving educational opportunities for children with disabilities.

In closing, I would encourage the Assistant Secretary if she can to find out how many students are in special education simply be-

cause they have reading disabilities and what it is that we as a Congress can do to make sure that teachers as a matter of fact have the education and the training so that, first of all, they are in a position to identify these problems, and second, they know what to do with them after they have identified them. We have tried to do that in higher education, where we are trying to get on the backs of those who prepare teachers to do a better job in preparing them to teach reading, because there are so many youngsters out there who are trapped simply because they have some reading disabilities.

I expect that over the next few weeks, the administration will be in regular contact with us and appraise us of the progress they are making in preparation of the final regulations, so that we may be fully informed of their likely contents prior to their release.

Thank you, Mr. Chairman, and I am sorry that I took so much time.

The CHAIRMAN. That is quite all right. It was an excellent statement.

Senator Kennedy?

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY. Thank you, Mr. Chairman. I want to thank you for having this hearing. I want to welcome Judy Heumann back to the committee and say again how much all of us value your work in the Department over a long period of time and, I must say, in terms of the development of the regulations as well. We are very grateful to you for all the good work that you have done.

Thank you, Mr. Chairman and our colleagues who are here today for this important hearing. I apologize for being late. As all of us on the committee know, we have our education legislation on the floor, so we will be in and out during the course of the hearing. But I would just like to make a very brief opening comment.

Last year, Members of both the House and the Senate worked hard to bring all sides together, making the needed compromises to pass a fair, balanced and bipartisan bill. Students, parents, teachers and school administrators left their indelible mark on this legislation as well by putting aside the divisions of the past and finding constructive compromises.

Now Congress owes the children and families in this room today and across the country the most effective possible implementation of this landmark legislation. For 23 years, IDEA has held out hope to young persons with disabilities that they too can learn and that their learning will enable them to become independent, productive citizens and to live fulfilling lives. For millions of children with disabilities, IDEA means the difference between dependence and independence, between lost potential and productive careers. The challenge we face now is to protect that promise, not to compromise it.

Yesterday, I had the opportunity to meet with three young students with disabilities who are here with us today—Chris, Charles and Owen. They came here from Georgia to share their concerns and to ask this Congress for two things—to give them the educational opportunity to pursue their dreams and to never go back to the days when school-age children with disabilities were ex-

cluded, segregated or denied educational services from public schools.

The requests of these children deserve the support of every Member of Congress, and I thank the children and their families for being with us here today, and I assure you that your concerns will be heard.

One question that is being raised in this hearing is whether a fair balance has been achieved between the rights of a child with a disability and school safety in regard to school suspension. During the debate last year, schools asked for additional leeway to discipline students with disabilities, to help guarantee a safe learning environment for all students. The bill provides more flexibility for schools to discipline students with disabilities, but this flexibility should never be used as an excuse to exclude or segregate a disabled child because of the failure to design behavior management plans or failure to provide support and services or staff training.

Mr. Chairman, I would like to include my full statement in the record, and I also want to add that Senator Paul Wellstone, who is attending Senator Terry Sanford's funeral, is necessarily absent, but he wanted me to ask that his statement be included in the record as well.

The CHAIRMAN. Without objection. All statements of those present or not present will be made part of the record.

Senator KENNEDY. I thank the chair.

[The prepared statement of Senators Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

Mr. Chairman, I commend your leadership last year on the Individuals with Disabilities Education Act, and I know that all of us on the Committee look forward to working with you to achieve its effective implementation.

Last year, members of both the House and Senate worked hard to bring all sides together, making the needed compromises to pass a fair, balanced, bipartisan bill. Students, parents, teachers, and school administrators left their indelible mark on this legislation as well, by putting aside the divisions of the past and finding constructive compromises. Now, Congress owes the children and families in this room today and across the country the most effective possible implementation of this landmark legislation.

For 23 years, IDEA has held out hope to young persons with disabilities that they too can learn, and that their learning will enable them to become independent and productive citizens, and live fulfilling lives. For millions of children with disabilities, IDEA means the difference between dependence and independence, between lost potential and productive careers. The challenge we face now is to protect that promise, not compromise it.

Yesterday I had the opportunity to meet three young students with disabilities who are here with us today. Chris, Charles, and Owen came here from Georgia to share their concerns and to ask this Congress for two things to give them the educational opportunity to pursue their dreams, and to never go back to the days when school-aged children with disabilities were excluded, segregated, or denied educational services from public schools. The requests of these children deserve the support of every member of

Congress. I thank the children and their families for being with us today, and I assure you that your concerns will be heard.

One question that is being raised in this hearing is whether a fair balance has been achieved between the rights of a child with a disability and school safety in regard to school suspensions.

During the debate last year, schools asked for additional leeway to discipline students with disabilities, to help guarantee a safe learning environment for all students. The bill provides more flexibility for schools to discipline students with disabilities, but this flexibility should never be used as an excuse to exclude or segregate a disabled child because of the failure to design behavioral management plans, or the failure to provide support services or staff training.

Research tells us that suspension and expulsion are ineffective in changing the behavior of students in special education. When students with disabilities are suspended or expelled and their education is disrupted, they are likely to fall farther behind, become more frustrated, and drop out of school altogether. This outcome is not what Congress intended in the statute, and we most ensure that the law is implemented in a way that protects any child against being left out or left behind.

As we take this opportunity today to discuss the regulations for IDEA, we must continue to honor the great goal of public education—to give all children the opportunity to pursue their dreams.

We must be committed to every child—even those who are not easy to reach or to teach. Thank you, Mr. Chairman, and I look forward to the testimony of our witnesses at this important hearing.

The CHAIRMAN. Now, I just want to explain what I will be doing. Senator Coats has an amendment pending on the floor, and I am going to allow him to go first—

Senator COATS. On the floor—not here.

The CHAIRMAN [continuing]. On the floor; right. So I will allow him to go first and make a brief statement. Then, I will turn to Congressman Martinez and other members. We will all have 5 minutes for questions, and you may use that 5 minutes to make your statement or ask questions, whichever is your preference.

Senator Coats?

OPENING STATEMENT OF SENATOR COATS

Senator COATS. Thank you, Mr. Chairman. I will just take 1 minute. I was just informed about half an hour ago that my amendment was due on the floor, so I will have to leave to do that.

I just want to associate myself in the interest of time with the remarks of the chairman and Congressman Goodling. In my 18 years in Congress, I have never witnessed a more extraordinary bipartisan process than what took place in pulling these IDEA Amendments together last fall, and the administration participated in that—nothing close. The final conference that we had was a celebration of a process and an accomplishment that is extraordinarily rare in this institution.

I am now distressed to learn that something that we all participated in, and we were all aware of the details of, is now placed in jeopardy because of the Department's practices of not understanding, apparently, what the intent of the Congress was—and I

thought we were all on the same page—in implementing regulations that are probably going to force us back into a process where we will never be able to replicate what we did before.

So I hope that we can clarify that this morning, but I have a book full of things here that are inconsistent with what I thought we had all agreed on. There appears to be an ignoring of congressional intent, or a misunderstanding of congressional intent. There appears to be a process within your Department, Ms. Heumann, that is undermining something that is extraordinarily rare. So I hope we can impress that upon you this morning—and you are hearing some of it now, and you are going to hear a lot more of it, I think. This needs to be fixed and fixed quickly; otherwise, we are going to find ourselves back in with more amendments to make sure that you understand what it is Congress is trying to do, which we thought you agreed with.

Something is going on in your Department which is a process which is undermining what we attempted to do, and I strongly feel that we need to fix that and fix it as soon as possible.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you.

Congressman Martinez?

OPENING STATEMENT OF REPRESENTATIVE MARTINEZ

Ms. MARTINEZ. Thank you, Mr. Chairman.

Good morning. I would like to join my colleagues and other Members in thanking each of the witnesses for their participation here.

I want to especially thank Secretary Judy Heumann for appearing here today. Her work on behalf of the administration and the millions of disabled and nondisabled children in America has been without parallel. Her leadership and dedication during our work to reauthorize the statute and now her work to update the regulations has been worthy of great praise in my mind.

As my colleagues mentioned in their statements, almost a year ago today, myself and many of the Members whom you see before you today joined the President and others in the historic IDEA Amendments of 1997 when they were signed into law. The collaborative process, which Mr. Coats referred to, was unparalleled between the House, the Senate and the administration. The administration sat in on all those negotiations and was fully aware of what the intent was. I do not understand the questioning of their understanding of the intent.

Along with other people from the community groups, parents, teachers, disability advocates and school administrators, we produced what Mr. Coats referred to as a monumental piece of legislation. That has been the Nation's premier special education law which has the integrity and stands for years to come. IDEA in its present form strengthens the assurances that children with disabilities receive a free and appropriate public education. It does this through the participation of children with disabilities on a State and district-wide assessment and ensuring increased parent participation. The statute also ensure that schools are safe for all students, so that all students can develop and learn in a safe environment without ceasing services to those people who present a prob-

lem or to moving them into alternate settings if that setting is not appropriate.

With these thoughts in mind, I wonder what are we doing here today. Why are we having a hearing on proposed regulations on which the Department has had substantial input in the form of thousands of comments? Why did the majority letters inviting the witnesses to today's hearing raise no issues which are of concern to parents and disability advocates? Why did the majority invite a witness who has publicly stated her support for opening up the statute? If the purpose of this hearing is to address areas which the members of our respective committees have questions about, that is fine, but if the purpose of this hearing is to lay a foundation for reopening the statute or jeopardizing the bipartisan compromise signed into law less than 1 year ago, I put my colleagues on notice here today—those of us who voted for a bipartisan bill will not vote for anything that goes back on the agreement we had when we voted for it. [Applause.] In my opinion, the regulations with the Department issued last fall bolster the language and the intent behind this statute as we agreed to it.

While there are provisions in the NPRM which could benefit from minor clarifications, let us not forget that these are proposed regulations, and in the process in which the Department is presently involved, the review and analysis of comments is designed to add resolution and clarification to the final product.

I do want to stress that the proposed regulations have an overall strong statutory basis. The time all of us spent working on the reauthorization of IDEA was well-spent and produced a very balanced and strongly-supported bipartisan bill. The regulations clearly follow the themes which we as Members laid out in our effort to deal with the competing issues and the needs of children with disabilities in the schools.

Unfortunately, my view of the regulations is not shared by everyone here today. Since the publication of the NPRM by the Department, intense pressure has been exerted on Members of Congress to lessen the protections afford to children with disabilities in the proposed regulations. To compromise the carefully-crafted balance achieved last year and tilt this compromise away from the children with disabilities and their parents is wrong. I call on the Members at this hearing and on others in Congress who care deeply about children with disabilities to remember the spirit and commitment we all made to the bill which we authorized in statute last year.

The intent of that bill is strongly reflected by the proposed regulations the Department has issued. Let us not go down the road toward undoing our hard-fought compromise or by injecting partisanship into this issue; it is not necessary.

In closing, I want to reflect a little bit on what Mr. Goodling said about the funds. We all agree that there should be more funds to help the local school districts, but understand this, that in the first place, the law was brought about by a U.S. Supreme Court decision that the local school boards were denying these children an education. It is asserted in one of the letters that we received that we are ignoring the local school boards and that we are issuing statements of distrust.

Well, the history proves that there should be distrust, because history proves that these children were being isolated and not given a fair and equal education as the other children.

The idea of cessation of service to young people who are incarcerated is the dumbest idea I have ever heard. When you cease giving services to young people who are incarcerated, you end their chance of being rehabilitated.

Before the markup, we had a hearing which included representatives from Orange County, one of the most conservative parts of the country, and the chief of police, who is himself a conservative, made that very statement: "Cessation of services to kids who are in trouble is the dumbest idea I have ever heard." That was a Republican chief of police who said that.

Now, getting back to the financing, sure, we would like more financing, but the fact of the matter is that the primary responsibility for educating these children belongs with the local school district, and likewise, the financing for it belongs there, too. Realizing what a hardship it would create on them, we decided in the law that we passed to create a fund that would help them and assist them with that hardship. And I especially emphasize assist them, not carry the whole load. They have a responsibility, too.

As the court ruling was, they would have had to encumber themselves with the debt of educating those children themselves. We helped them.

With that, I would say that if the purpose of this hearing is to discover those things that we do need clarification of, fine, let us do that; but let us not destroy the bipartisan effort we made and the celebration we had in signing this bill into law.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Harkin would like to make a brief statement.

OPENING STATEMENT OF SENATOR HARKIN

Senator HARKIN. Mr. Chairman, I want to again associate myself with the remarks made by my friend, Congressman Martinez. I think he really said it well and pointedly.

I also want to thank Judy Heumann and her staff and all the people at the Department of Education for all of their hard work.

Congressman Martinez said it right. We worked long and hard on IDEA, and we reached a compromise. There is a process and a procedure. I must say that I take great umbrage at what my friend and colleague from Indiana just said, and I am sorry he had to leave the room. To somehow say the Department is undermining the intent of this law, I believe is just—well, I do not want to use the words I probably would use in private—but the Department is not undermining the law. The Department is following the letter of the law.

We have a process and a procedure here. We pass a statute, the Department proposes regulations, there is a comment and review period, and then there are final regulations. I have been here for 23 years, and I have not yet seen one case where we have had this kind of hearing after the deadline for filing comments had closed. If they were so interested in the proposed regulations, why didn't they have this hearing before January 20th, before the deadline

ceased, to talk about the proposed regulations? No—we are having it now, almost 2 months later.

Again, my friend from Pennsylvania has said that he was disappointed in the way the Department developed the regs. I do not know. All I can tell you is that our staff over here was briefed—

Mr. GOODLING. That is what I thought.

Senator HARKIN [continuing]. Before the regulations were proposed and every step of the way during the comment period, our staff was extensively involved.

Mr. GOODLING. That is what I thought.

Senator HARKIN. And, I am informed, so was Mr. Goodling's staff.

Mr. GOODLING. That is not true.

Senator HARKIN. Well, I am informed that both Republican and Democrat staff were extensively involved during the comment period, and my staff are nodding their heads because they were there with the Republican staff.

Mr. GOODLING. That is not true.

Senator HARKIN. Is that true, Ms. Heumann?

Ms. HEUMANN. Yes, it is.

Senator HARKIN. Thank you, Ms. Heumann. If you want to put her under oath, you can put her under oath.

Now let me just finish on this. Obviously, all regulations need to be clarified. That is why we have a comment period. The Department has received over 4,500 comments. I have worked with Ms. Heumann for many years now, and I have every reason to believe they will take those into account and issue the final regulations. I know that clarification needs to be made on some of these regulations. That is fine. That is the way we implement the law around here.

I am confident that these regulations will be strong and clear and consistent with the bipartisan compromise we enacted last year.

Finally, let me just say again that I am concerned as you are, Mr. Martinez, about this hearing and about sending the wrong message. I take my Republican colleagues at their word that the purpose of this hearing is simply to hear the opinions of key stakeholders to identify some common ground. Yet the issues they identified to be discussed at today's hearing are rather one-sided; they reflect only the concerns of schools and their attorneys, not the concerns of parents and the disability community. As Mr. Martinez said, two of the three witnesses invited by the majority to testify today specifically advocate opening up the statute and amending it in ways that would adversely affect children with disabilities and undo the careful compromise we enacted last year.

When we reauthorized IDEA last year, we told the parents of children with disabilities that they would have to compromise, that the only way we could get a bill enacted was if everyone compromised. But we also told them that if they did compromise, we would have a strong law that would be implemented and enforced, and that there would be no further debate and no further attempt to open up that statute. That was the agreement that we made.

Well, the parents did compromise, and I hear about all the problems that schools have, that school districts have and teachers

have, and my heart goes out to them, especially to the teachers, who need help and who need support and are not getting it adequately to deal with children with disabilities. We hear about all these problems that the schools and the school districts have. How about the problems that parents have? How about the agony and the strife and the trouble they have had to go through? The history, as you say, is replete with this. How about their daily lives and when they have to get up every day with children with disabilities, with hopes and dreams, knowing that if their kids get a decent, appropriate public education, they can make it.

I know. I had that experience in my own family. I know what it was like before the dark days of 1975—

The CHAIRMAN. Senator—

Senator HARKIN [continuing]. And I know what has happened since 1975. And I just want to say, Mr. Chairman, that we enacted a strong bipartisan piece of legislation, and I want to be clear to everyone—our word is our bond. We promised there would be no further amendments to IDEA, and I intend to make sure we keep that promise. [Applause.]

The CHAIRMAN. I realize there is a lot of emotion connected with this bill, but we are already 45 minutes into the hearing, and we have not heard from our first witness yet.

For the record, I will State that to my knowledge, there was one staff briefing in August of 1997 in which we participated.

Mr. GOODLING. That is correct.

The CHAIRMAN. Before we begin I have statements from Senators Frist and Murray; and Congressmen Riggs and Norwood.

[The prepared statements of Senators Frist and Murray; and Congressmen Riggs and Norwood follow:]

PREPARED STATEMENT OF SENATOR FRIST

For the past three years I have worked to bring common sense changes to our nation's special education law. During the 104th Congress as chairman of the Senate Subcommittee on Disability Policy I held several hearings and introduced a bill to provide reform to the Individuals with Disabilities Education Act (IDEA). This bill served as a foundation for our efforts in the current Congress.

In the spring of 1997, Congress reached agreement on a bill to reform IDEA. This bill generally improved flexibility in the law, especially regarding how to best discipline students with disabilities who violate school codes of conduct. The effort to find common ground was very difficult and required sacrifice from all parties. When draft regulations were released last October, I was alarmed by the Department of Education's heavy handedness in misinterpreting the revised law. I understand that this was done with the view that it will help protect students with disabilities. I would argue that it in fact hurts them in the long run.

In its attempt, the Department has placed more burdens on schools and undoing the flexibility that the Congress intended to give schools. This has only served to further alienate those who need flexibility to provide a safe environment in which all children can learn. I have traveled extensively in Tennessee and visited many schools and one of the main concerns I hear is that the draft

regulation will impose undue hardship and added burden on schools in order to comply with the law. Instead of working together, advocates for the disabled and school administrators are arguing over the finer points of the draft regulations and law. I am—concerned that they are focused on preventing lawsuits, not on educating children with disabilities.

I would like to acknowledge the leadership of Chairman Jeffords and Chairman Goodling in holding this hearing to examine the draft regulations. I am confident that we can work together to ensure that the flexibility we agreed to in the spring of 1997 is maintained.

PREPARED STATEMENT OF SENATOR MURRAY

Thank you Mr. Chairman. The passage of the Individuals with Disabilities Education Act Amendments of 1997 was accomplished in a most unique way. It was a bicameral, bipartisan Congressional process, involving the White House and the Department of Education. Extensive negotiations over a lengthy period of time produced a law which took into consideration the full range of needs and viewpoints—those of children and parents, general and special educators, principals and administrators, state and local educational agencies and the public.

The true uniqueness of this legislation is that balance was achieved between potentially competing interests. This law has assured essential civil rights protections for children with disabilities, and in providing a method of implementing these rights, a balanced approach was used. We must make sure the final regulations provide the same balance between interests.

Although the passage of IDEA '97 was monumental, we are not done yet. Adequate funding of IDEA is essential. I am seeking to increase appropriations for IDEA this year and every year until the federal government lives up to its 40 percent share of the cost of educating children with disabilities. The mandates and reforms required in IDEA '97 can not be made without a substantial federal funding increase.

It is also clear from the Reauthorization of IDEA '97 that information sharing is paramount, now more than ever. Never in the 20 year history of IDEA, dating back to 1977, has a major rewrite of the law been attempted. It is not surprising that the regulatory changes seem comprehensive and massive. The need for information-sharing is even more important because this was the first major overhaul and rewrite of IDEA.

The statute requires each state to have a comprehensive plan for training which provides technical assistance for all individuals who work with students with disabilities, including paraprofessionals, bus drivers, school food service personnel, along with educators, school nurses, social workers, principals and school administrators.

The law also provides for training programs to be provided via competitive grants. The specific training areas include: help with reducing the paperwork on Individual Education Plans, developing appropriate alternative settings, discipline training, sharing of best-practices in mediation, technology considerations that will support student achievement and appropriate use of assistive technology. This training is so crucial that it is imperative that we ap-

appropriate adequate funds for this program. Currently, we know that various state and local school districts do an excellent job of providing training in the areas of mediation and discipline. If we do not provide adequate funding for this type of training we are inviting disaster.

Additionally, we must reduce the paper work. We must not frustrate teachers with mounds of paperwork and keep them from spending time doing what they love, and what we need them to do—teaching. Instead of making a difference in students' lives, our teachers are being buried in paperwork and constantly feeling intimidated by the possibility of making an error. The final regulations must subtract, not add to the paperwork.

Even with the passage of IDEA '97, I predict there are still problem areas that will arise which the law does not address. For instance, we have not provided for adequate school facilities or personnel to properly handle the legal requirement of alternative placements for students with disabilities who exhibit dangerous or violent behavior. We need to provide adequate funding, training and facilities in order to effectively implement interim placement requirements. I know the law does not answer all of the problems and I remain committed to being part of the solution.

Mr. Chairman, I conclude by urging all members of Congress to vote for the adequate funding of IDEA and to support a regulatory process which achieves balance between the many interests in our educational process.

Thank you.

PREPARED STATEMENT OF REPRESENTATIVE RIGGS

Thank you, Mr. Chairman. As a principal author of the IDEA Amendments of 1997, I too am concerned about the Department's implementation of this historic legislation and its treatment of the finely-crafted, delicate compromises contained within it.

I share Mr. Goodling's concerns about the low priority that the President has put on funding for IDEA. I too am sorry to see that the Clinton Administration has chosen to cut special education funding. Factoring in inflation and new children coming into the system, the Clinton budget for Part B of IDEA is a 2 percent cut to schools. The President has decided to back away from support for tried and true education programs such as IDEA so he can roll out \$20 billion in new federal education programs on which he can leave his imprint. If the President would first fund the federal special education mandate to local schools, communities would have the funds to do the things the President has proposed such as building new schools, hiring more teachers, reducing class size and buying more computers.

I am equally dismayed over the manner in which the Clinton Administration has dealt with the Congress on these regulations. Last year, we dealt the Administration into the negotiations to get a law that everyone could live with. It's unfortunate that the Administration has not reciprocated. The Department's bureaucrats have written these regulations in seclusion, without the continuous, open and honest consultation and collaboration that was a hallmark of last year's Act.

One issue that continues to concern me is how the Department of Education proposes to implement Public Law 105-17 with regard to providing special education services to students with disabilities who are incarcerated in adult prisons. This issue was vigorously debated during the consideration of the 1997 IDEA amendments and the Administration was at the table when these provisions were adopted. The Administration knows full well that the new law clarifies how services are to be provided to individuals in adult prisons who have been tried and convicted as adults.

The legislative history, as well as the statutory language, clearly indicate that a State may now delegate its obligation to oversee prison education to the prison system or the State adult correctional department. Standards relating to IDEA services, placement, and paperwork may also be relaxed to acknowledge the unique security requirements of the prison environment. It also allows States, at their discretion, to deny services for adult prisoners while forfeiting only the pro rata share of Federal funding for that small segment of the total IDEA eligible population.

This means that if California decides to deny services to adult prison inmates, the U.S. Department of Education can only reduce Californians total Federal allocation by a small percentage instead of withholding the entire allocation, as the department is currently threatening to do. This is the only enforcement action available under the law to the Secretary in these cases.

This is an important issue to my home state of California. California receives the largest amount of IDEA, Part B funding in the Nation—over \$300 million. There are half a million students with disabilities in California who benefit from the educational services that this money helps pay for. Governor Wilson and I have worked closely on this matter for the past year. We cannot sit by and watch the Department of Education jeopardize the provision of services to millions of disabled children over its concerns about how well the State is serving adult prisoners under the Act. We expressly limited the Secretary's authority in this area for this very reason.

Despite the clear legislative history on this issue, the Department's proposed regulations have added language that allows the Secretary to take additional enforcement actions. These actions include withholding further payments to the State under part B of the Act, referring the matter to the Department of Justice for enforcement, or any other enforcement action authorized by law. This concerns me because the statute makes a clear exception to the Secretary's general enforcement authority in section 616(c) of Public Law 105-17.

Simply put, section 300.587(b) of the proposed regulation violates the statute. There is no basis in the statute or legislative history for this ill-advised regulatory language. I strongly urge the Department to delete the reference in this section that allows the Secretary numerous enforcement actions in this case.

While I wrote to Secretary Riley earlier this year outlining my concerns over this issue, it's clear that I have to do a little more to get the Department's attention. That's why I recently introduced H.R. 3254, The IDEA Technical Amendments Act of 1998, that would further clarify the statute and make this language even

more explicit. Over the coming weeks, I hope that we can work out a solution that carries out the intent of the law.

Finally, let me say that where we go from here is important. We need to recapture that bipartisan, bicameral spirit of cooperation that made the IDEA Amendments of 1997 a leap forward in improving educational opportunities for children with disabilities. For this to happen, Congress needs to be kept informed and consulted to ensure that the final regulations implementing these historic reforms are consistent with the statute and are workable for parents and those involved in educating the children who are served under IDEA. I urge the Administration to agree to join with us today in moving toward this goal.

PREPARED STATEMENT OF REPRESENTATIVE NORWOOD

Mr. Chairman, thank you for taking the time to hold hearings on the Individuals with Disabilities Education Act. I must say that when I talk to teachers and school superintendents back home, this is one of the greatest topics of concern. I welcome the opportunity to learn more about IDEA, especially about the federal Department's regulations implementing the new law we passed last year.

Let me begin by stating that I doubt that there can be a more important job in America than the teaching of our children. This is especially true of our special education teachers. Education for those with disabilities allows all of our children to have the opportunity to learn and succeed. Ensuring that all our children have a safe and orderly environment within which to learn must be a top priority.

It is from this standpoint that I approach the question of IDEA reform.

Most every teacher I have talked with about IDEA brings up the need for disciplinary reform. Teachers tell me that there is a great double standard that exists when disciplining disabled students. It is nearly impossible to suspend or expel a child that is disabled—no matter what they may have done. We need to allow our teachers to treat students equally when it comes to maintaining safety and a well-ordered learning environment in the classroom.

After all, equality was what the original IDEA law was about. Teachers are very concerned for their own safety and well-being, as well as that of their students. I have been told of several instances where students who were disabled in name only—maybe they are not reading up to their grade level—were taking advantage of their "status" to avoid any consequences for their actions. In fact, this appears to be a more common practice than I ever dreamed possible.

Mr. Chairman, we need to make sure that our teachers and students are protected, while at the same time ensuring that disabled students are treated fairly. This is critical if we are going to make sure that our children—disabled and non-disabled—have a good learning environment and good order at their schools. Learning will soon become a casualty if we do not do this. And soon enough, our children will become economic casualties if they do not learn well. I believe that we should trust our teachers to determine who should be in the classroom. They will know first hand which students are discipline problems and which students are just having

a hard time reading up to their grade level. They will know how to deal compassionately with those students with disabilities who, because of their disability, may be disrupting the classroom experience of others. We can and should provide a good education for all without putting our teachers in an untenable position.

Mr. Chairman, we must also provide real financial relief to our states and school districts. This program is probably the greatest of all unfunded federal mandates. Washington might cover about 9 percent of the cost of the program, we're supposed to cover 40 percent! That leaves the states and localities with a bill of perhaps 30 to 50 billion dollars! We need to do more. That is why I have sponsored amendments to the Education Appropriations bill to increase funding for IDEA by reducing funding from other less necessary programs.

In closing Mr. Chairman, let me stress that last year's bill was just the beginning of needed reforms. And given the way the administration is writing the reg's to enforce that bill, even those reforms may be subverted.

Mr. Chairman, the IDEA program is still in dire need of reform. That is clear to me every time I go to a school back home. Our teachers are pleading for relief from its onerous burdens. Let us heed their plea for help and in so doing help our children perform better at school.

Thank you and I yield back the balance of my time.

The CHAIRMAN. Our first witness is Secretary Heumann. Madam Secretary, thank you for your testimony. I have read it. In it, you review for all of us the process by which the Department collected information prior to formulating the proposed regulations. I want to thank you for allowing Dr. Reynolds of your staff to join me in a public forum on IDEA in Vermont recently, which was very helpful. We had a lively exchange about IDEA and the regulations, and I know we will have a similar lively exchange here today. So I look forward to your testimony, which I have read.

Please proceed.

STATEMENT OF JUDITH E. HEUMANN, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATIVE SERVICES, U.S. DEPARTMENT OF EDUCATION, WASHINGTON, DC, ACCOMPANIED BY JAMIE STUDLEY, ACTING ASSISTANT SECRETARY, OFFICE OF GENERAL COUNSEL, AND THOMAS BEHIR, DIRECTOR OF SPECIAL EDUCATION PROGRAMS

Ms. HEUMANN. Mr. Chairman, thank you also for allowing Ms. Reynolds to accompany you. It was good that I was able to go home and by with my mom for Passover; so thank you.

Mr. Chairman, I would like to introduce, to my left, the Acting Assistant Secretary for the Office of General Counsel, Jamie Studley, and to my right, the Director of Special Education, Tom Behir.

I would like to thank you and Mr. Goodling and the members of the committee for the opportunity to appear at this joint hearing of the House Committee on Education and the Workforce and the Senate Committee on Labor and Human Resources.

I welcome this chance to talk with you today about the Department's education of the regulations necessary to implement the In-

dividuals with Disabilities Education Act of 1997. The extraordinary bipartisan and bicameral process through which the IDEA 1997 statute was developed, although at times difficult, was well worth the effort. The end result was a fair bill that reaffirms the constitutional right of children with disabilities to an equal educational opportunity, and at the same time, it recognizes the legitimate concerns of State and local education agencies responsible for implementing the law.

I would be remiss if I did not say from the outset that IDEA 1997 improves and reforms special education in a very crucial way. Special education is now linked more closely to general education reforms, thus helping ensure better educational results for children with disabilities.

First, IDEA 1997 accomplishes this by ensuring children's participation in the general education curriculum with their non-disabled peers. Second, it accomplishes this by requiring increased accountability through participation of these children in State and district-wide assessments. And third, it guarantees increased meaningful participation of parents in their children's education. And finally, IDEA 1997 promotes good, coordinated-based services to students with disabilities.

We all want to make sure that schools are safe and conducive to learning for all children. Based on the agreements built into IDEA 1997, we are much closer to making this possible. And let us not forget that the new law is directed toward reducing burdensome paperwork to the greatest extent possible.

When IDEA 1997 was signed into law, we in the Department felt a great responsibility to the disabled children, parents, and the education community to move rapidly to produce clear rules. We were committed to promulgating regulations that were necessary to improve the quality and equality of services to children with disabilities of all ages, and only when necessary to facilitate implementation in the field.

When regulations in fact are necessary, our goal has been to strive for flexibility, equity and limited burden. In the education of the NPRM, we used a very collaborative approach. We sought input and suggestions from a wide constituent base representing all groups and individuals with a deep commitment and vested interest in the education of children with disabilities.

For example, we thought it was important to get input from the field on what should become proposed regulations, so we did several things. First, throughout June and July, we conducted a series of meetings with interest groups, including parents, school boards, school administrators and teachers, to solicit their input.

Second, 3 weeks after the law was signed, we published a notice in the Federal Register soliciting advice and recommendations on regulatory issues from the public. By the end of August, we had received 334 written comments.

Third, we arranged for six regional workshops for State directors of special education to be trained in the new statutory requirements.

Fourth, we conducted onsite meetings with 49 State educational agencies. At these meetings, each State brought together its own

constituencies to develop steps for local implementation of the new IDEA.

And fifth, in response to numerous requests from the field, the Department drafted a question-and-answer document offering initial guidance regarding the removal of students from their current placement for 10 school days or less.

In addition, as part of our open collaborative process, the Director of Special Education Programs, Dr. Tom Hehir, and I made numerous presentations at national, State and regional conferences.

It is our belief that we made every effort to ensure active and meaningful involvement of the general public in developing these proposed regulations. While pursuing this, we drafted the proposed regulations and had the NPRM on the street in just over 4 months from the date that the bill was signed into law. As you can imagine, that was an enormous accomplishment to which I owe my staff a great deal of gratitude.

But we all fervently believed the results would be worth the extra effort, and they were. We set a very ambitious schedule, and I believe our publication of the NPRM was among the most prompt taken for any program of similar complexity.

Immediately following the October 22, 1997 publication of the NPRM, we conducted seven public meetings—in Boston, Atlanta, Dallas, Washington, DC, San Francisco, Denver and Chicago. Tom or I were at all of those, as well as staff. At the end of the 90-day public comment period, we had received over 4,500 written comments from a very wide range of individuals and organizations interested in the education of children with disabilities. These included letters from virtually every major national advocate and professional association and letters from individual parents, persons with disabilities, teachers, administrators and others. Their response was most gratifying. It indicated that people cared greatly about these issues.

We have also received approximately 50 letters from Members of Congress, including the letter of January 20th to Secretary Riley from Chairman Goodling, Chairman Jeffords, Chairman Riggs, Senator Coats, Senator Frist and the Majority Leader, commenting on the Department's NPRM. In addition, we have met a number of times with congressional staff of both parties to answer questions regarding provisions in the NPRM about which you had concerns. We viewed these meetings as very helpful and extremely productive.

The comments as a whole addressed many sections of the regulations—for example, discipline, IEPs and procedural safeguards. We also reviewed numerous comments on issues which had been the cornerstone of the current regulations but were not changed by IDEA 1997.

Many people assumed that a number of provisions retained from the current regulations were new requirements. However, what the NPRM has done in actuality is to provide many constituents with an opportunity to take a good, hard look at the IDEA requirements.

We are glad that so many people have offered their comments. Judging from the breadth of comments, this law and these regulations clearly make a real difference in the day-to-day education of our children.

Our staff is working virtually around-the-clock to complete the analysis of the comments and to make preliminary determinations about changes we should recommend to the Secretary for the final regulations. A detailed analysis of the 4,500 comments received and the changes that have been made as a result of those comments will accompany the final regulations. The perspectives of individuals and groups of parents, teachers, State and local officials and individuals with disabilities are immensely important to us, and I personally came here today to assure you that as Members of Congress, your comments always carry great weight in our activities.

We at the Department of Education are committed to continuing our cooperative bipartisan efforts with you to ensure effective implementation of the statutory requirements of IDEA 1997.

At this point, I would like to address one of the issues you asked me to address today in the area of discipline and our proposal to limit suspensions without educational services to 10 days in a school year.

First, it is important to realize that we decided to regulate on this issue in part to respond to requests from both congressional staff and the education community that we address this issue. School administrators in particular wanted us to provide guidance because the statute was being read by some to require services the first day a child is suspended. We responded by issuing guidance in the form of a memorandum to the Chief State School Officers. Later, we included language in the NPRM permitting a child to be suspended without services for a total of 10 days in a school year. We briefed staff in the House and Senate, Democrats and Republicans, prior to the release of this guidance.

We developed this proposal on the basis of the statutory language and the legislative history and the principles we believed were reflected in the 1997 Amendments—namely, that to help schools provide safe and disciplined environments that are conducive to learning by all children; to ensure that schools provide timely, positive interventions to address behavior that impedes the learning of a child with a disability or other children; to make sure that children with disabilities are not punished for behavior that is related to their disabilities; and to keep children with disabilities connected to education even when they are appropriately subjected to disciplinary measures.

It is our belief that the proposal in the NPRM would give schools the ability to deal immediately and effectively with student behavior not conducive to learning. As indicated in the NPRM, schools would have the authority to repeatedly remove children with disabilities for up to 10 days without the concurrence of their parents as long as such removal does not constitute a pattern of exclusion.

Schools would have the discretion to determine where the child is to be placed during any removal that is 10 days or fewer—for example, a child who could be sent home or placed in an alternative school. Additionally under our proposal, a child could be removed for a total of 10 days in the school year without receiving any services.

At the same time in developing our proposal, we considered the adverse impact that cessation of educational services can have on

the child's success in school. A series of short-term suspensions over the course of a school year could easily lead to educational failure if the child is cut off from educational services. Congress clearly recognized the importance of continuing education by explicitly requiring services for students who have been suspended or expelled. As we thought about how to interpret the statute, we concluded that services were just as important for the child who has been repeatedly suspended for minor violations of school code as for a child who has received a long-term suspension or who has been expelled.

If our overarching goal is to promote educational success for all children, we need to ensure that the children who are most at risk of failure, most at risk of dropping out, stay connected to education. To help ensure that schools take steps to prevent further behavioral problems and do not unfairly punish children for behavior related to their disabilities, we also propose that schools be required to convene the IEP team to address these matters once a child has been suspended for a total of 10 days. Again, the statute was being read by some to require the IEP team to meet the first time a child was suspended for even a day.

While we believe that both children and schools would benefit from giving early attention to understanding and addressing behavioral problems, we concluded that the IEP team should not be required to meet as a matter of law unless the child was engaged in significant or repeated misconduct; hence, the 11th day rule.

Basically, we tried to develop a proposal that would help schools respond appropriately to a child's behavior, consistent with each child's right to an appropriate education that would promote the use of appropriate behavioral intervention and that would increase the likelihood of success in schools and school completion for some of our most at-risk students without unduly burdening schools.

While we are seriously considering and analyzing all of the comments we received on this proposal, we believe that our 11th day rule is consistent with the principles reflected in the 1997 Amendments to IDEA.

In closing, I want to mention that we are committed to publishing the final regulations this spring, and we are doing everything humanly possible to complete the analysis of the 4,500 comments, develop recommendations for the final regulations based on that analysis, and present the analysis and recommendations to the Secretary for his final decisions.

IDEA 1997 and its pending regulations represent an important opportunity to support children with disabilities in meeting the same high standards of achievement we expect of their classmates—to stay in school, graduate, become productive, employed citizens. To further this effort, we also will be working to provide parents, teachers, administrators and others with the research-based tools needed to improve classroom results. A key element of this effort will be the establishment of partnerships with associations and organizations to meet the needs of four audiences—families, local-level administrators, teachers and services providers, and policymakers. Each of these partnerships will address its membership's needs to understand the changes to the law and implications

of these changes for their roles in improving results for children with disabilities.

The Department will support new institutes and centers to address particular requirements in IDEA 1997. And last, the Office of Special Education Programs will support an evaluation of the impact of the changes of IDEA 1997 in practice and policy.

Chairman Goodling, Chairman Jeffords and other members of the committee, like you, we view this hearing as a continuation of the collaborative and bipartisan effort that has characterized the passage of this legislation. By supporting children with disabilities and their families as they endeavor to attain a quality education in this great Nation, all of us will benefit.

For too long, we as disabled people have been separate and unequal. Now, through our joint hard work and our vision, we can see a brighter future where no child is discriminated against because of a disability. I, like you, have fought for the rights of disabled children. Quality education is the key to both higher education and employment. Join me in ensuring that children with disabilities receive a quality education today so that we can assure them of a quality life tomorrow.

We look forward to the opportunity of responding to questions at this time.

[The prepared statement of Ms. Heumann may be found in the appendix.]

The CHAIRMAN. Thank you, Ms. Heumann. We appreciate your testimony, and as you know, there will be some friendly questions as well as some not so friendly questions. Let me start with a friendly one, since we discussed this.

During the reauthorization and actually the appropriations of funds, taking into consideration that more money would be forthcoming, we wanted to make sure that the States would not cut back their funding if the Federal Government increased their funding. However, my State did the opposite; Vermont increased their funding.

This presents a problem as to whether the local school districts can cut back and supplement with the State funding, because it is in excess of what the State is presently doing. The purpose of Vermont's action was to try to reduce the amount of local funds to help the school districts out.

So I have two questions. First, are you aware of this problem—and I think we brought that up with you in Vermont—and second, do you think we would be able to address that problem in final regulations so that Vermont will not be penalized for increasing their funding?

Ms. HEUMANN. We have received your comments on this, and we are currently looking into it and will certainly give it consideration as we move forward with the regulations.

The CHAIRMAN. Well, I hope it is good consideration.

It would be helpful to know your rationale for the provisions in the proposed regulations that we asked you to address in our letter of invitation. I am particularly interested in those proposed regulatory provisions that are not specified in Public Law 105-17 or discussed or agreed to in the IDEA working group. I assume my col-

leagues will have similar interest, and I want to concentrate first on a couple of them.

The proposed regulations, for instance, would allow hearing officers in addition to courts to award attorney's fees. What was your rationale for including this authorization, and what is the legal basis for it? There is nothing in the statute that provides for that.

Ms. HEUMANN. States already have the latitude, Senator Jeffords, to allow hearing officers to make awards of attorney's fees. We were not giving States an authority that they do not already have; we were just articulating the fact that they have that authority.

The CHAIRMAN. A more problematical area is the questions and answers issued by the Office of Special Education Programs last September, which State that, quote: "We recognize that the statute is susceptible to a number of interpretations in some areas related to discipline. But the position enunciated below represents what we believe to be a better reading of the statute."

Since you were a participating member with us in the education of the statute, why do you believe that the interpretations made by the Department are a better reading of the statute? In particular, during the IDEA negotiations and congressional debate, every reference made to 10 days indicated that the Honig case was being codified into new law. The Honig case set forth that schools can unilaterally remove children for up to 10 days for any reason at the school's discretion.

Every court case and Department of Education policy letter since Honig addressing the issue indicate that the 10-day period is per incident and not cumulative. You were involved in these negotiations, and you were aware of this, yet your proposed regulations State that the 10-day limit is per school year rather than per incident. Where did you come up with this interpretation, and why did you deviate from the statute on this very important issue?

Ms. HEUMANN. Mr. chairman, we do not believe that we deviated from the intent of the statute. First of all, we began to hear, after the statute was signed, as a result of both the notice that we had put in the Federal Register, asking for individuals to give us comments in the areas that they wanted us to regulate on, that this was an area that needed greater clarification. And as I know you know, one of the attempts of regulations is to give greater clarification so that the field can in fact appropriately implement the statutes.

We certainly did not intend to over-regulate on this issue, but felt that the issue and the complexity of the discipline language warranted further review.

When we sat down to develop this particular provision, it was our belief that we needed to look at issues that the committees had agreed on regarding no cessation of services, the fact that we needed to look at whether or not the fact that we needed to do a manifestation determination and that the committee had also agreed that there was a need to do behavioral assessments.

We believe that we were articulating the best work, that, taking everything together and not looking at individual aspects of the discipline provisions, but taking them as a whole, we needed to

make sure that schools were safe for all children, that the rights of children with disabilities were being protected.

Now, we have received many comments on this issue regarding the 11-day rule, and we certainly are taking these comments seriously into consideration. I do believe that the proposal that we had in the NPRM, however, is a balanced proposal which is a reasonable interpretation of the statute.

The CHAIRMAN. Well, as you know, we have a difference of opinion on that. My time has expired—

Ms. HEUMANN. Mr. Chairman, I would like to make one other comment, and that is that, as I said previously, prior to our releasing our policy guidance to the field last September, we did invite members of the House and Senate side, Republican and Democratic staff, to review our proposal. At that time, we did not receive comments from staff that they disagreed with the proposal that we were putting forward.

The CHAIRMAN. Chairman Goodling?

Mr. GOODLING. I thank the chairman for yielding.

First of all, I want to make it clear that I did not come here to have some partisan wrangling, and I take a back seat to no one here, including the Senator from Iowa, when it comes to wanting to make sure that every child in this country has an equal opportunity for an excellent education. I do not want to hear rhetoric about State and local government responsibility for funding coming from that side of the aisle.

If our bond is our word, then the 40 percent is also our word. The 100 percent mandate came from the Federal level, and the 40 percent of excess costs was to come from the Federal level. You had 20 years to do it and did not get anywhere near it. So I do not want to hear that kind of rhetoric, I did not come here to "roast" the Assistant Secretary. She was a very important player in bringing about the legislation that we brought.

I came here because I want to get us back to the "love-in" that we were in at the end of May last year and the first week in June this last year. I have to make it very clear that you did have a briefing with my staff in August—one hour—basically, on the 10-day discipline issue. We did not hear from that point on—even though we asked for the opportunity to participate regularly. We did not hear until you called us on Monday before the release. You briefed us on Tuesday, and you issued them on Wednesday. And of course, we are still waiting for the response which you just gave to the letter of January 20.

Ms. HEUMANN. But Mr. Goodling, I just would like to say that while the briefing may have been one hour, staff would have been more than willing to brief more extensively if in fact we received comments from staff indicating that they wanted further discussion. It was the understanding of my staff that the briefing was a successful briefing, with an agreement on what we had presented.

Mr. GOODLING. But we were asking to participate regularly, and the next participation, as I indicated, was when you called us to tell us that you were going to brief us the next day and issue the regulations the next day.

Ms. HEUMANN. I just want to say on the record that we have been spending an incredible amount of time working on these is-

sues. We have not had long delays or lapses in time where we were working on something else before we briefed staff. This was an issue that we worked on very rapidly because we were concerned that as the schools were opening up, we wanted to make sure that we were at least able to give guidance regarding what we believed an appropriate interpretation of this provision of the statute was.

So that in essence, we really did try to do everything to assure that all were involved in this process. And we did hold a series of briefings in December for Republican and Democratic staff on the House and Senate side—at least three briefings—where we had ample time, and we gave staff as much time as they wanted to discuss what was in the NPRM.

Mr. GOODLING. Again, we would have been very happy to help you every step of the way and probably could have.

Let me ask you one question—as I said, I am not here to “roast” you or to have a partisan discussion. I want to try to make sure that by the time we are finished with all of this, all students have an equal opportunity for a good education. My question is—and I talked about the city of York a little while ago—you said that one of your regulatory goals is limited burden, and I want to make sure that when we get down to where the rubber meets the road that that actually happens. The reason I mention that is because the IEP from the city of York went from four pages to nine pages; the parental rights information went from nine pages to 19 pages—this is all of that information. And I want to make sure that as a matter of fact, you are doing what you said you want to do, and what you said is that you want limited burden.

This does not help the child; this does not help the teacher. It takes away from both.

Ms. HEUMANN. Mr. Chairman, my staff would be more than glad to review the documents that you have to determine whether or not the increased number of pages are the result of the Federal statute or of interpretations of the State or local community.

We have been requested in the past to review documents, and in most cases, have found that the significant increases in numbers of pages being required in fact are not the result of Federal statute. So we would be glad to do that for you.

Mr. GOODLING. Well, we just want to make sure. You know their fear of the heavy hand of the Federal Government. They are going to make darned sure that they have crossed every “T” and dotted every “I” and I guess that is how they have come up with about 10 or 12 more pages.

Ms. HEUMANN. Well, I also want to say that there were a number of provisions that were integrated into the IEP in the statute that we all agreed on, and I think some of the additions in the IEP, like the need to discuss whether or not a child needs technology, whether or not a child needs a behavioral intervention plan, those would be new requirements on the IEP. We would argue that most of those, however, should have been being implemented in practice before and that what we all did was to integrate that into the statute. So that would be some of the increased requirements.

But as I just want to reiterate, we would be glad to review those papers to see whether all of those increases are a result of the Federal requirements.

The CHAIRMAN. Senator Harkin?

Senator HARKIN. Mr. Chairman, I think I took enough time in my opening statement. I will again yield on my time on questions. I believe that the last question on discipline was adequately answered; that the process is well underway and that briefings were held. I see no reason to further get involved in that subject area whatsoever.

I just wanted to cover one area that dealt with school administrators and teachers and others who have to implement the changes. How has the Department been helping the States and the school districts to implement the Amendments, and how does the Department plan to provide the necessary technical assistance to ensure proper implementation?

It gets back a little bit to what Congressman Goodling was saying about this increased paperwork. I was nodding my head when you answered because I had investigated that in the past and found that in many cases, these were State and not Federal requirements that required the increased paperwork. But again, I guess I need to know how you intend to help the local school districts and teachers and others understand this law and understand these regulations.

I think we have a couple witnesses coming up, and I have read their testimony and previous letters, and I think there is just a lack of understanding there, and I believe the burden is on you to get that information out.

Ms. HEUMANN. Thank you, Senator Harkin.

Let me reiterate a number of things that I said in my testimony and expand on it. First of all, like you, we believe that technical assistance is really one of the most critical elements to assure that this law is appropriately implemented. And we in fact believe that we not only need to be providing effective technical assistance to State and local educational communities about the substance of the law, but it is also critically important that we take the practices that we have learned through our research and integrate that so that the field can understand, for example, not just what the statute stipulates around discipline, but how in fact to assure that good practices can be provided to assure that discipline can be occurring within schools and for individual children with disabilities.

So for example, this summer, we will be holding a series of summer institutes that will be pulling together educators at the State and local level, that will be providing them with information on the statute as well as providing them with information on best practices. We currently have out on the street an RFP which will allow for four grants to be provided in the area of technical assistance. Each one of those will be approximately \$1.5 million. As I said, one will be for parents, one for policymakers, one for administrators, and one for teachers and services providers.

It is the intent of those technical assistance grants, again, to provide significant dollars which the associations themselves will be able to provide significant guidance on. They will be developing the methodology that they believe are most appropriate to assure that their respective audiences are effectively being trained on technical assistance, and those four projects will also be required to be working together, because one of the results of the bipartisan/bicameral

agreement was also for the first time to bring together parents and representatives from the education community.

It is our hope that we will have a meaningful relationship developed, not contentious, that will allow State and local educators and parents to work more effectively together on the implementation of the statute.

Senator HARKIN. One complaint that I hear a lot—when you dig behind the complaints that come in, a lot of it comes down to the poor teacher in the classroom. That teacher is overburdened, with probably too many students in the classroom as it is. They are trying to deal with kids with disabilities, and they are not trained in that area; they do not understand it, and they get frustrated, and I can understand that frustration. So I am concerned about getting the information to the teachers and what we can do to help them. And do you have any kind of a hotline or anything that is established where educators can get information and help on an immediate basis?

Ms. HEUMANN. Let me say on the grants that I was just talking about, one of the requirements for the grantees will be that they in fact are able to answer questions from their respective communities. So the grants that will be given to the teachers and service providers will have a requirement in them that they are able to answer from the field.

There are a number of other grants that we also have coming out, including the State improvement grants, which are a new requirement, which will allow States to apply for money that has a very strong focus on personnel education, and again, for the States to be working closely with administrators and teachers.

We have other specific grants that are going out, and we have really moved in the last 4½ years toward assuring that the grants that are being put out in the field are not only looking at best practices but are looking at effective ways of assuring that information is being disseminated to the field.

So that, quite frankly, we are paying a great deal of attention to this. We also intend to have other briefings for various constituency groups once the regulations are finally promulgated so that we will be able to enter into a series of discussions similar to the ones that we had as we were developing the NPRM.

Senator HARKIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Harkin.

Representative Souder?

Mr. SOUDER. I want to say at the beginning that I appreciate your comments about wanting to work together and continue the spirit of bipartisanship that we earlier had.

I am concerned because I have not been focused on this issue, and I came today to learn more because I want to be as helpful as I can as we enter the funding process. And I must admit to being shocked at what I felt was a very partisan and slanderous attack on some of the Members here. We can have disagreements without having a disagreement over the fundamental principle of how do we best help all of our kids, including those who are most needy.

I want to pursue a couple of questions along those lines. I am someone who has not had to deal with this first-hand and I have come to learn the frustrations of the parents involved. I have also

come to conclude that, while I believe the school boards and the administrators and the teachers are trying to serve all those students, that they often in fact did not exhibit a very understanding approach and were trying to accomplish many things and needed to be pushed and therefore helped push for this compromise.

But I think that as we evolve this, we need to watch that we do not break the compromise as far as how fast we move all the regulations, particularly as we can have the money catch up. And there seems to be an understanding among school districts that they have got to have all of these regulations changed by July 1.

Is that your intent, or are you able to phase in some of these things over time? I mean, our intention is to try to continue to boost the funding. The school districts can only meet each one of these new criteria by shorting other programs in their schools, which is going to pit parents against parents, communities against communities, and some of the advances we are making will be reversed.

Is there any flexibility on the date, or a phase-in, or how do you see this unfolding?

Ms. HEUMANN. Mr. Souder, most of the requirements of the statute and their effective implementation date were mandated in the statute. There are a few areas, one in particular that I would like to raise with you, where there has been some issue of discussion, and that is around the effective date of the implementation under the IEP of the new provision.

I would like to note that in a Republican letter, there was no mention of concern about the effective implementation date for the IEP. We have, however, received a number of comments from education associations that this is an area of concern. So, in our deliberations with the education of the regulations, this in particular is an area that we are looking at very closely, attempting to come up with an appropriate resolution to the problem, and I think that that is probably the issue that you are hearing most about.

Mr. SOUDER. Yes, I agree that that is, and in general, in addition to pushing for those regulations, I would encourage you, as we try to match funding streams with the requirements that we have put on, that we do not wind up dividing communities and having that type of pressure, or there will be a backlash.

Ms. HEUMANN. Let me also say on the IEP provision that our original proposal from the administration was that the effective date of the IEP not take effect until 2 years after the statute was signed into law. That was not an accepted part of the agreement, which is why the effective date of July 1, 1998 is in the statute.

So I am just trying to say that we understood the problem and in fact did try in negotiations to have that date not take effect as soon as it is intended at this point.

Mr. SOUDER. One other question I wanted to follow up on is on the 10-day discipline question. I think it was, unfortunately, simultaneously clear that the intent was to have 10 days in a time period, but I think your interpretation, quite frankly, also has a lot of merit in the fact that if that was abused, in fact, it would go far beyond 10 days.

However, I think that limiting it to 10 one time is also kind of pushing the envelope in the other direction. For example, do you

believe that you would have that standard for all students in a school system, or is there some kind of flexibility that we can give—per semester, a second time, it initiates some other type of process, students are early identified—because I think that the way it is here, you may err in the other direction, when in fact I happen to agree with you to some degree that it was so vague that it could have been abused as well, and you were pushed into an interpretation.

How much flexibility is there on that, and where can we head?

Ms. HEUMANN. Well, if I could first clarify the fact that the statute has a number of provisions in it—one, the fact that if a child brings a weapon to school, if a child brings drugs to school, that child can be removed for up to 45 days to an alternative placement. That is in addition to the fact that school districts would be getting 10 days in which they would not have to provide any services.

The same is true if there is an allegation made that a child is likely to seriously injure self or others, and if the hearing officer agrees that the child is likely to seriously injure self or others, that the child could also be removed for up to 45 school days.

So we have through statute removed three areas that we heard from the field were of significant importance to them. So the issue that we are dealing with now around the 11-day rule is concerning individuals who commit less offensive school code violations.

The statute also requires, for individuals who are removed to alternative settings for up to 45 days, that they are to be receiving services to enable them to obtain the goals of the IEP.

So that in our deliberations as we were looking at this together, we felt that the 11-day rule was appropriate, because we are not mandating that on the 11th day, the child be placed back in the regular classroom. What we are saying is that we want the IEP team to be reconvened, we want there to be a review of whether or not the action that the child took was the result of the child's disability, whether or not, for example, there was a behavioral assessment plan in place, because now it is required in the statute that that be considered—it was good practice previously in the regulations, and in fact, we knew that only about 11 percent of children who in fact needed this were getting it. So it was put in the statute, and we believe it is critically important that we look at whether or not a behavioral intervention plan was developed, whether it is being implemented appropriately. The child can be receiving services in an alternative placement for a period of time.

So I think that in balance, we believe we have created a policy which looks to assure that disabled children are not cut off from educational services, because we have a particular concern for disabled children that when they are cut off from services—and we have already given school districts in our proposal 10 days, so that means that for 2 weeks of school, children will not have to be attending and will not have to be receiving any services—and I think that if a child were being truant for up to 2 weeks, we would be very concerned about what in fact would be happening to that child. So I think that in balance, we have developed a proposal which is not burdensome on school districts, which assures safety for schools for disabled and nondisabled children and provides appropriate protection for children.

Mr. SOUDER. Thank you, Mr. Chairman.

The CHAIRMAN. Congresswoman McCarthy?

Mrs. MCCARTHY. Thank you, Mr. Chairman.

With Mr. Goodling, and certainly with my chairman, when we started to give Federal funding—and I agree the school district should pay for the education of all of our children, whether they have disabilities or not—but I also know that over the years, because techniques, care, higher education, education in the school itself are costing a lot more money than I think anybody ever imagined. I have no problem with that. If I had my way, or if I had my wish list, every child would be given the top of everything.

And with Mr. Goodling, I do agree that we have to increase our funding for our IDEA students; we have to. Our schools are overburdened with those particular prices.

I am also concerned about the teachers. I know of too many classrooms that have children with learning disabilities that are doing I think a terrific job, but they are not trained to deal with a lot of our children. They want to help as much as possible, but they do not know what to do. So we must improve in that area.

With that, as far as the miscommunication between our committees, obviously, we are the education committee, and one of the things I have found here is that sometimes we do not educate ourselves or send an education message out to the people, especially in the audience, and to our school boards.

Everyone is going onto the internet. I think that that will be a terrific way to give parents the opportunity to find out information on what their rights are, and for our school boards to also find out all the information on how we can deal with children with disabilities.

We are coming up to the year 2000, and information is used constantly, and I think that that is something we should definitely be looking into. I am hoping that we can resolve this without taking away the intent of how we did work so well on this bill, because we did, and both sides gave an awful lot, and both sides caved in because they wanted to still do the best, but as with everything, we had to compromise. For the child with disabilities, for the child who is physically disabled, I know how important education is.

I also work with so many children who probably do not have a real good chance in life, but we owe them the best we can give them so that they can reach their full potential no matter what it is—and some people probably want to do a cost analysis on that, and I understand that, but I do not believe in it, because none of us knows what that potential is.

I will certainly support Mr. Goodling in trying to get more increases in the Federal area, and hopefully, we can work this out and have a good bill continue to go forward.

Ms. HEUMANN. If I could just make couple of comments and give you some additional information, one change that occurred in the statute, as I said earlier, was the education of the State improvement programs. And one of the intents of that was to enable regular education as well as special education teachers to be trained, because like you, we all had concern that regular education teachers were not necessarily getting the kind of training they needed to be able to appropriately work with disabled children.

A number of the initiatives that the President has been advancing, we believe also would be very helpful in this area, such as increasing the number of teachers, reducing class size, and assuring that teachers are appropriately trained to be able to identify children at an early level who are having difficulty learning to read. I think Mr. Goodling earlier raised this issue of children who need assistance, who are having difficulty learning to read, and we believe this is a critical issue, and I think there are number of ways through the reauthorization that we have addressed this issue.

Let me also say that we have a web site in the Department of Education, and our web site is actually one of the model web sites for Government, and we have the IDEA regulations and other technical assistance on that web site. Individuals can get information about all the grantees that we have. A number of those grantees are hot-linked between our web site and their web sites.

Another one of the requirements in the technical assistance grants that I talked about earlier, the four that are going to be issued for administrators, teachers and service providers, parents and policymakers, there will also be a requirement that each one of those grantees has a web site. So again, like you, we believe that this is critically important.

The one point that I want to make on this is that the Department has been doing a lot of work on issues around web sites, because not all web sites are being developed so that they are accessible to blind and other disabled individuals. And one of the issues that we have been doing a lot of work on is to make sure that as these web sites are being developed, they are being developed in a way that individuals will be able to have access to them.

Mrs. MCCARTHY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mrs. McCarthy.
Congressman Deal?

Mr. DEAL. Thank you, Mr. Chairman.

I would like to return to the issue of discipline, because I think that is the one issue that, if you talk to parents in general, whether they are parents of disabled children, whether you talk to school administrators or whether you talk to the general public, they perceive the lack of the ability to maintain discipline in the classroom is perhaps the single most significant issue in terms of deterring our overall educational efforts.

Therefore, I think that when we deal with this issue of discipline, we have got to deal with it in light of what the public and all involved in education consider to be the significance of that issue.

Now, I have heard the explanation as to why the 10 days is on a per school year basis rather than on a per incident basis, and I would like to explore that with you for just a minute. I think this is a situation in which we have attempted to legislate by regulation what was not intended in the actual statute itself, and I would like to work through that process with you.

Do you agree that in the process of developing the 1997 Act that the 10-day rule was the direct outgrowth of the Honig decision?

Ms. HEUMANN. Yes.

Mr. DEAL. Do you agree that the Honig decision limited it to 10 days per incident, rather than school year?

Ms. HEUMANN. What I was trying to articulate earlier is that what we believed was necessary in developing this provision was that we needed to look at the entire provisions within the statute regarding discipline.

Mr. DEAL. No. I have heard that explanation, and we are going to get to that in a minute. Do you agree that Honig was on a per incident rather than a per school year basis for setting the 10-day limit?

Ms. HEUMANN. Honig did not address that question.

Mr. DEAL. But it did not indicate that it was anything other than a per incident basis, either, did it?

Ms. HEUMANN. It did not address the issue.

Mr. DEAL. And no subsequent case in which the issue was raised had ever limited it to anything other than a per incident basis, had it?

Ms. HEUMANN. I think it is necessary, Mr. Deal, to look at the provisions in the statute in their whole, in their entirety—

Mr. DEAL. Yes, ma'am—a very subjective explanation and very self-serving. If you do not want to address Honig any further, which I do believe was the genesis of it—it was the basis on which all of the committees and the Congress, in my opinion, acted without any issue.

Do you have anything in the legislative history of the debates in the committee or in the body itself that would indicate that the intent was per school year?

Ms. HEUMANN. We believe that in the statute, there is a prohibition against cessation of services—

Mr. DEAL. Yes, I have heard that.

Ms. HEUMANN [continuing]. Let me—I also want to say, Mr. Deal, that in preparing for this, there are certain comments that I have not necessarily continued to repeat, and one of them is the fact that, obviously, we have received a lot of comments on this particular issue, and so I appreciate the information that you are giving me now, and these comments and the other comments that we have received are being reviewed. We have not come up with our final determination on this or any of the other issues, so we are not trying to get into a—

Mr. DEAL. The reason why I am boring in on this issue is because you are not the only one who has received those comments. A while ago, when you said you had reached a conclusion that was not burdensome on school districts, I want to tell you that that is not the conclusion that my school districts are sharing with me.

Ms. HEUMANN. I would like to say one other thing if I could.

Mr. DEAL. Sure.

Ms. HEUMANN. I really believe that one of the things that we need to do is get these regulations out and allow this law to be implemented. I think people are theorizing on what they will or will not be able to do.

I think we have been trying in the entirety, in implementing a law which we all agreed with last year, to provide aggressive technical assistance, moneys that will be able to go directly to the associations, so the associations themselves will be able, in my mind for one of the first times, to train their staffs and their memberships subsequently, because I believe that one of the problems that has

existed is that school board members and others have not necessarily received appropriate technical assistance on what this law really means.

Mr. DEAL. I agree with you, and I have told my people accordingly.

Ms. HEUMANN. OK.

Mr. DEAL. You raised one very interesting issue that I would like to explore briefly—and my time is just out. You indicated that the IEP team would be convened—let us say we are at the 10-day limit, we have exhausted the 10 days—you indicated that the IEP team could be reconvened to determine if the conduct was not the result of the disability.

Could I ask you what do you interpret the regulation to do if at that point the IEP team has determined that these suspensions that have led to the exhaustion of the 10 days in a school year are not related to the disability? Would your interpretation be that the 10-day rule does not apply if they make that determination?

Ms. HEUMANN. If there is a determination made that there is no manifestation, then a child with a disability can be treated like a nondisabled child except for the fact that there can be no cessation of services. So there needs to be a way of assuring that an alternative education will be provided for that child.

Mr. DEAL. So the 10 days would then not be an issue at that point, only the alternative education.

Ms. HEUMANN. That is right.

Mr. DEAL. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. I inadvertently skipped Congressman Martinez, and I am sorry, Jack.

Senator REED. Well, can I make my opening statement now?

The CHAIRMAN. Well, no one made opening statements, but I will come to you next.

Senator REED. Mr. Chairman, that is fine.

The CHAIRMAN. Mr. Martinez?

Ms. MARTINEZ. Thank you, Mr. Chairman.

I want to follow up on Mr. Deal's comments about the suspension, because in California—and it was probably as a result of the Honig decision, because it happened after that decision—you cannot expel a child for more than 10 days. So our regulations already conform to that regulation.

Ms. HEUMANN. And I believe that is for disabled and nondisabled children in California.

Ms. MARTINEZ. That is right—for disabled and nondisabled.

Ms. HEUMANN. And there are a number of States that actually have similar provisions for disabled and nondisabled children.

Ms. MARTINEZ. And the problem we have when we have debated this and discussed it at both the staff level and at Members' level was that there was a pattern out there of suspending the disabled person for 10 days, letting him come back for 1 day, then suspending him for another 10 days.

In fact, right now, there is a disabled child in Mississippi who has been suspended for 45 days. They are evidently not complying. A 14-year-old in Georgia was suspended for 50 days. A 7-year-old

in another State was suspended for 47 days. A 16-year-old in North Carolina was suspended for 30 straight days.

In Montgomery County, MD, if you lose five unexcused days, and a suspension like that would be unexcused days, you lose the whole year; you are out for that whole year. So this is really a denial of services if that person happens to be disabled. Anybody can conclude that.

So I think we need to be supportive of what the office has done, because it guarantees that there will be an alternative setting after that 10 days and not just a repeated 10 days, a repeated 10 days, a repeated 10 days. That is protecting the child.

Ms. HEUMANN. And also, I think we need to remember that one of the premises we all had as we entered into this reauthorization was that our goal is really to identify children early who had needs, provide appropriate interventions for those children early, to assure that appropriate professional development is being done so that we can prevent many of these problems.

I recognize that the issue of discipline has become an overarching theme, but I think that the measures that we took in the reauthorization in the areas of weapons, drugs, and seriously likely to injure others, and the provisions that we had in the statute with the regulations around children who have committed less egregious school code violations, coupled with this very important theme of early identification, etc., and effective professional development, and the State improvement plans, really, over the course of the next 3 to 5 years, I believe will allow us to see differences in schools.

I also want to say that I encourage all of the Members to visit some of the schools that I have been visiting, where they in fact have looked at the whole school and have been providing appropriate interventions for all children, like Project Achieve in Florida and Programs Up in Rhode Island, in Westerly, RI. We have a report that was actually issued just 2 weeks ago, and it also includes some information on Lane County, OR, which shows that where whole school reform is going on, discipline problems for all children are significantly going down, that improved results are occurring for all children. And I think that ultimately, this is the goal that we want to achieve.

Ms. MARTINEZ. My time is running out, but before it does run out, let me ask you this question. During the reauthorization, I remember that Senator Kennedy was concerned, as were parents and child advocates, about the lack of compliance with the requirements of IDEA; as I just stated, there are a lot of people who are not complying. How do the proposed regulations improve compliance with the law?

Mr. HEHR. Mr. Martinez, there are a number of things in both the statute and the proposed regulations that I think will lead to higher levels of compliance. There is no question that one of the things that we have heard over and over again from parents is that the existing law has not been well enough implemented by the States and local education agencies.

In the statute, the number of areas where we did not regulate is quite significant in this Notice of Proposed Rulemaking because the statute—like, for instance, the IEP, where the statute is very

clear about what people are supposed to do—I think will make it much easier for people to implement the law.

We also have been looking at ways in which to revise our monitoring system at the Federal level to work in partnership with States and parent organizations and local education agencies to make sure there is better implementation of the law.

So I think that having clearer rules and people understanding what the rules are will help make sure that children get what they need.

Ms. MARTINEZ. Thank you, Tom.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Reed, you have 5 minutes to use any way you want.

Senator REED. All right. I will not make an opening statement, but will first commend Secretary Heumann for her excellent testimony today and all of her work, along with her staff, in preparing for today and preparing for these regulations.

Just for the record, it might be helpful to put in context where we are in the regulatory procedures. I know you have published the proposed regulations, but what is your view on where we go next and what possibilities we have for changes?

Ms. HEUMANN. Well, we have been working five, six, 7 days a week, we have been working until 9 an 10 o'clock at night, and we have meetings scheduled for this Saturday and Sunday. We have started our meetings with the Deputy Secretary and the Secretary.

It is our hope, as we said in our statement, that we will be able to get these regulations out this spring. We are really doing everything that we possibly can to have that occur.

Senator REED. And you are taking all the comments you received on the proposed regulations?

Ms. HEUMANN. Yes. We are required to review all 4,500, which actually is more than 4,500, because we did review the comments that came in after the closing date. We have to review them, and we have to include the analysis of those comments in the discussion portion of the regulations, so there will be a very clear record. And all of the comments are open to the public for any of you who would like to come and read them.

Senator REED. And indeed, also, they are fully available to any member of the House or Senate to comment individually and to receive their due share of attention by the administration.

Ms. HEUMANN. Yes, and I would obviously like to say that we certainly give great weight to the comments that come in from the Members, and I think we have done everything we can to assure people that we are doing that.

One of our responsibilities in developing the regulations is to assure that a fair process is going on, and to make sure that parents, advocates, educators, policymakers get appropriate input. And we clearly recognize the Congress' responsibility in assuring oversight with these regulations and that we do a good job.

Senator REED. Let me quickly return to the issue of the 10-day period. The statute as I understand it—and you have better knowledge, or counsel does—is silent on whether that is per incident or per school year; is that correct?

Ms. HEUMANN. Yes.

Senator REED. But the overall context of the bill is quite clear that there is a prohibition on ceasing services for any child who is diagnosed with a disability.

Ms. HEUMANN. Yes, and that is stipulated in the statute.

Senator REED. And essentially, reading the statute, the stipulations and the language of the statute, you have reasonably concluded that the 10-day period applies to essentially 10 days for the whole academic year; is that correct?

Ms. HEUMANN. Yes.

Senator REED. And you are very appropriate that that is the appropriate legal reading? Your counsel is nodding.

Ms. HEUMANN. I am very confident of a number of things—one, that anything that we put out in an NPRM or in a regulation is touched by multiple hands of attorneys, both within my agency and in the Office of Management and Budget, so that any direction that I may want to go in that the attorneys disagree with, I would not be able to move there.

And as I said earlier, we are in the middle of the regulatory process and therefore are reviewing all comments and have not yet come to conclusions.

Senator REED. Thank you very much.

Let me raise another issue which was raised to me by one of my principals in West Warwick—not Westerly, but West Warwick—Rhode Island, and that is the perception they have, looking at these proposed regulations, that for example, if a student is disruptive, and the principal decides to suspend the student, but then, the principal receives a call from the parent saying, “Well, my child is in special education,” or some intimation that the child has a disability or a problem—maybe not even in clinical terms of disability or problem—the perception of this principal, then, is that he has to stop and say I cannot discipline this child as I would another child in school; I have to immediately get into a special education mode and follow IDEA.

Is that your understanding of the statute, is that your understanding of the regulation? Is there a divergence between the two?

Ms. HEUMANN. There are two issues here. One, if we are talking about a child who has been identified as needing special ed services, one of our premises is that discipline is something which is important for all children. There is no intent through the statute or through the Department of Education to at all say that children who have disabilities should not learn how to be disciplined in school.

There is a provision in the statute which discusses “should have known,” and I think that may be also what you are referring to.

Senator REED. Well, I guess I would fault on the “should have known,” but if the principal would see no other indication—simply, a parent comes up and says, “By the way, you should know as you are suspending my child that I think he has a disability.”

Ms. HEUMANN. What we have currently in the NPRM is taking the statute on “should have known,” and it is in the NPRM. We have received a number of comments on this, and therefore, we are looking at whether or not we have to further regulate on this provision in order to allow people to have an understanding that we do

not believe that every child who has a discipline problem in school would be a child with a disability.

But I do want to say that the reason why "should have known" is important is because we hear from parents and teachers and others that a family may believe that a child has a disability, has asked that that child be evaluated, and evaluation has not occurred. I am a former schoolteacher, and when I was teaching, prior to IDEA, there were children in my class who had difficulties, and there were times when I would go to an administrator and say, "I think we need to have some kind of an evaluation to determine whether or not this child has additional learning needs," and those evaluations did not necessarily occur.

So the intent behind "should have known" was really to assure that if in fact a child was exhibiting behaviors that should have reasonably concluded with looking at whether or not that child had a disability, and that did not occur, that you want something to happen. The child does not get the due process protection until the determination is made that the child does in fact have a disability.

Senator REED. So just to fill out my example here, just on the word of the parent, that would trigger an evaluation, but it would not suspend or obviate the suspension or the punishment which the principal took.

Ms. HEUMANN. Right.

Senator REED. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Hutchinson?

Senator HUTCHINSON. Thank you, Mr. Chairman, and I apologize. I have been on the floor—dealing with education, though—but I regret that I missed some of the earlier testimony, and if I am repetitive, please forgive me.

Ms. HEUMANN. No problem.

Senator HUTCHINSON. But I must say, Madam Secretary, that while I appreciate very much you being here, I was not greatly reassured by the statement about it "touches multiple hands of attorneys"; I do not know that that is going to—it may be the concern of some of my constituents.

My office has received—and I am sure this is true of many Senators—hundreds of letters from countless school districts across Arkansas in which school officials from superintendents to teachers have expressed their reservations with the Department's proposed rules and regulations for implementation of the IDEA law. And while I will make this statement, I will assure you that we will get it to you in letter form if we have not already.

Throughout the letter, school officials highlighted how these proposed rules and regulations would pose serious concerns to the State and local education agencies in my home State of Arkansas. And in fact, I think on a later panel, one of my constituents will be testifying. Most importantly, I believe, along with many Arkansas school officials who have written to me, that the final regulations need to be consistent with the IDEA law, be clearly written and provide optimum flexibility to local school districts. The statute, I believe, is highly prescriptive and therefore does not need ex-

tensive rules and regulations in order to implement its requirements.

Upon examination, several of the proposed regulations add requirements beyond the intent, I believe, of the statute, thus raising some questions as to the specific statutory authority for their existence.

I know that there has already been a discussion about the 10-day issue, and I would like you for my knowledge to reiterate—it is my understanding that you have interpreted the statute as being 10 cumulative school days during the course of the year, as opposed to 10 days for any particular incident. Educate me.

Ms. HEUMANN. Let me first say that what we are discussing today is proposals. That is why we have the NPRM. These are not the final regulations. But let me also put in context the issue of the 10-day rule, or the 11th day, which is what people are concerned about. And I guess I would also like to say that we in fact have reviewed some of the materials that are being shared in Arkansas about some of the interpretations of the statute, and we do have some concerns about the way the Department of Education is interpreting our statute, and we would certainly be more than glad—

Senator HUTCHINSON. As they have concerns about the way you are interpreting the statute.

Ms. HEUMANN [continuing]. And we would be glad to meet with them about some of their issues.

But on the issue of the 11th day rule, I think the most important thing for you to know is that we are reviewing the comments that we have received on this issue; we are aware of the concerns of some. We believe that the policy that we developed on the 11th day rule in the NPRM was an appropriate policy. We believe that it is in conjunction with other requirements in the statute which deal with issues of a child bringing a weapon to school, drugs to school, or an individual who is seriously likely to injure others, because under those three categories, the statute allows for children to be removed for up to 45 days. And one of our issues in deliberating on this was the fact that we believed that we should be providing protections for disabled individuals who in fact have committed a less egregious violation of school code. That is one of the reasons why we came up with the 11th day.

Senator HUTCHINSON. Explain the 11th day; exactly what happens?

Ms. HEUMANN. On the 11th day—now, we are not talking about weapons, and we are not talking about drugs—

Senator HUTCHINSON. Right; I understand.

Ms. HEUMANN [continuing]. OK—if a child is out of school for 10 days—and it can be 10 consecutive days or multiples up to 10—the school district has to do nothing. If the child is suspended from school for an 11th day, then the IEP team needs to be reconvened, there needs to be a—

Senator HUTCHINSON. It is a long process.

Ms. HEUMANN. Not necessarily. IEP teams can be convened pretty quickly. But in that period of time, Mr. Hutchinson, that child can be in other than the setting that the child would have originally been in. One of the issues that was very important to us because of the way the statute was written is that we believe that

assuring that educational services can be provided to the child, but those services must be maintained. So that if in fact a school district were putting a child out of school for two or 3 days, the IEP team would be reconvened to determine whether there was a manifestation, to determine whether there was a need for a behavioral intervention plan, whether there was one and if it was being appropriately implemented; and over the course of those days that the child would be out, maybe in another setting, to assure that that child was receiving some form of educational services so they could attain the goals of their IEP.

Senator HUTCHINSON. I see my red light is on; that sure went quickly.

Thank you, Mr. Chairman.

The CHAIRMAN. Congressman Payne?

Mr. PAYNE. Thank you very much.

As the Assistant Secretary responsible for administering the IDEA program, and based on your years of experience advocating in behalf of individuals with disabilities, how important are the provisions regarding discipline in both the statute and the regulations? Could you also tell us more about how children with disabilities were disciplined before the enactment of IDEA's predecessor, the Education of All Handicapped Children—what were the procedures and how did they go about it?

Ms. HEUMANN. Now, are you talking about prior to 1975, before the law?

Mr. PAYNE. Yes.

Ms. HEUMANN. OK. Prior to the enactment of IDEA in 1975, there were about one million children who were receiving no educational services at all and millions of other children were not necessarily receiving appropriate services. Children could be removed, suspended from school, expelled from school without any protections, and that could be anywhere from a child whose disability—the cause of their disruption, like a child with Tourette's or a child with epilepsy or a child who was using Braille in the classroom with a stylus, or a child who would need some form of communication device—in fact there were clearly cases where those children were being removed from school or, more importantly or equally important, never included in a more integrated setting.

So I think that what we have done over the last 23 years is really to develop a statute which looks at the needs of the individual child, provides appropriate protections to the individual child, provides discretionary dollars to help assure that professionals and administrators are appropriately educated so that they can meet the needs of children with disabilities in their classrooms, and I believe that a number of the additional provisions in the reauthorization of 1997 also help to assure that kids are given appropriate protections, with educators also getting what they need.

In the development of this, I want to also restate that when looking at discipline, it was one of the first issues that we began to hear a lot about from the field, asking us to please look at this issue in order to clarify and asking us to develop a regulation, which is the intent of regulations, to clarify the intent of the statute.

Mr. PAYNE. So this question about the 10 days, I guess the difference is—I am of the opinion that in the course of a school year, 10 days would be the maximum that a youngster should be suspended, and that after that, the school district should therefore deal with the individual at home, individually, or provide education in some other manner.

I think that some people who are opposing this feel that it is a 10-day maximum, and let them come back a day and give them another 10 days. And being a former teacher myself, I would imagine that a lot of schools would really like to just have the problem go away. The best way to deal with a disruptive child who needs help is to simply put him out of school and you do not have the problem. But that is not what education is all about, and if you have to work harder with a youngster who has a disability, then you should be trained better and work harder. But if you allow schools to simply suspend children for a 10-day interval, let them come back for a day, and put them out for another 10 days, and have no responsibility for the education of the child—as a matter of fact, in many school districts, they are not even dealing with the individual—each special child or child with a disability is supposed to have an individual program anyway, which is probably not happening in many school districts. But to be able to have blanket suspension is sort of like “three strikes and you are out”—just lock them up forever, and you will not have any problems on the street—but that is not necessarily what rehabilitation is all about.

So I certainly disagree with a notion that 10 days out, 1 day in, and 10 days out is the way to go.

Ms. HEUMANN. Mr. Payne, I would also like to say that the last time I saw you, I told you that I was going to make a point of going out and visiting some juvenile justice facilities because I was very concerned about what was going on. And I, like you, am a former elementary school teacher in Brooklyn, NY, where I know that teachers did not necessarily want to teach the kids who had the most difficult needs—and in fact, I was barred from attending school because I was in a wheelchair.

So when I visited these juvenile justice facilities in Maryland and Los Angeles, there were a number of things that I saw and a number of things that I heard. I heard from parole officers that there were significant numbers of kids who in fact had reading difficulties, who were illiterate. I heard from the kids. I made a point of having dinner with them and spending time talking with them directly about how they felt that they were being pushed out and kicked out of school and how their diverse needs were not necessarily being understood by the teachers.

I think the purpose of the IDEA—and we have been talking about this today—is to identify kids' needs early on so that the kids do not feel like failures. You and I both know that when a kid is failing in school, by the time they are 7 or 8 years old, they are already reluctant to come to school; they are embarrassed about being in school; they cannot achieve what they are expected to achieve. When I talk to high school students who come from inner-city communities, they make statements to me like it does not make any sense that we are putting these kids out—these kids

need to be brought in, not brought out. We are rewarding kids by putting them out and not providing any services.

So I think the 10-day rule is one which we believe is appropriate. It allows these kids who are most at need to be cut out of services altogether. It provides a balanced, appropriate approach. It allows school authorities to assure that kids are being provided services. It requires the IEP team to be reconvened to allow some reasoned thought.

As we all move forward on increasing standards, expecting higher achievement, as one of the requirements in IDEA, which is for us to look at data around cessation, expulsion and dropouts, I think more and more attention will be paid to the fact that we need to be assuring that these kids are in school, and we need to be focusing on what we need to be doing to keep kids in school and to look at the examples like I discussed earlier, through Project Achieve in Westerly, RI, and Lane County in Oregon, where we know that principals and superintendents and teachers are doing effective jobs for all children, kids are coming to school, are learning in school, are not dropping out and are achieving more.

Mr. PAYNE. Thank you.

The CHAIRMAN. Congressman Kucinich?

Mr. KUCINICH. Thank you very much, Mr. Chairman, Mr. Goodling, members of the committee.

I want to thank the witnesses for their participation and also speak in support of the 10-day rule as has just been described.

As we get into debates like this, some of us in Government want to talk about children with disabilities; others of us may want to talk about law and order. And sometimes, we can get those two concepts which are important to all of us confused and get our priorities mixed up.

The whole concept of IDEA has been to bring children who are differently-abled into participation in a mainstream educational experience so that, then, they can participate in the larger society. We must remember where this started. We recognize that with the transition to that experience by differently-abled children comes certain challenges. It is a challenge for a differently-abled child to adjust to the physical structures of the academic environment. It is a challenge for a differently-abled child to be able to adjust to the emotional structures of the academic environment. And it is also a challenge for school officials, for teachers, for administrators, and it is a challenge for the other students as well.

IDEA has moved us into a new realm where, as people, we are trying to find a way to learn more about each other and to step up to our responsibility to have an expanded view of what education means and of what interacting in a society where different people participate means.

Placing the requirements of discipline into the IDEA, where it becomes such a priority that it defeats the purpose of bringing differently-abled children into the academic mainstream has got to be looked at with the utmost scrutiny, because I do not think Congress wants to create the circumstances where we take a step back, where we inadvertently make it possible to defeat the very purpose of the IDEA.

We know that it is quite a challenge for administrators, teachers, to have to bring differently-abled children into an academic environment where, even if a clinician may say that their disability could be causing a behavioral problem, you could have disabilities which can still not be directly linked to a behavioral problem, but the frustration of being in that setting can be so great that a behavioral problem can ensue and can then be the basis for a suspension.

We are all learning in this, and it is new; we are just starting, and because we are just starting, I believe the Department ought to be allowed to follow the appropriate procedures of developing these regulations and not be subjected to the kind of pressures which would tilt the statute's balance away from children with disabilities.

The whole commitment which this country has to making sure that everyone has a chance notwithstanding the difficulties they may bring to an academic environment should be sacrosanct. Sure, we want to preserve the academic setting for everyone else, and I do not think that you would disagree with that, but at the same time, we are in a new age in America where we look past color, we look past race, we look past creed, we look past sexual orientation, and we look past disability, to look to the person, to give that person a chance. Let us not go backward. Let us embrace that child who is troubled and find a way. If they have to be set outside that environment for 10 days in a year, then, in that period, we need to find out what we can do to keep them in the environment. But let us not set these children outside for 10, 20, 30, 40 and more days a year and deny them the opportunity to participate, because it is in that school environment, participating with other young children who are differently-abled and so-called normal that children have a chance to see themselves in the mainstream of this society. Let us not defeat that.

IDEA came about as a result of a bipartisan effort, and I want to say that Chairman Goodling and other members of this panel played a role in that happening. Let us not lose sight of where we started with this concept, and let us protect our ability to serve differently-abled children by letting the Department move toward it. And if you have a problem with implementation, I feel that you need to report to us, and then we can come up with the support that you need.

Would you like to respond?

Ms. HEUMANN. I would be very glad if we get this law implemented and we can get on to discussing implementation and enforcement. I am all with you.

Mr. KUCINICH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Chairman Goodling?

Mr. GOODLING. Again, I want to emphasize how important this July 1 date is. I think that, maybe more than anything else, that is probably the most important concern that we have.

You are correct when you say that you suggested 2 years for implementation. Disability advocates suggested immediately. We came up with the July 1 date with a very, very clear understanding that we were talking about new IEPs and revised IEPs; common

sense would tell us that you could not have all the parents and all the schools coming into compliance on July 1, with everything that is in this legislation. So I think it is extremely important that we remember how we got to July 1.

You were right suggesting 2 years. That was not acceptable to the disability advocates. So my hope would be that we will be very, very careful what we do about this July 1 and what the punishments are and all those kinds of things.

Ms. HEUMANN. First of all, let me say, Mr. Goodling, that as I have already said a number of times, we are aware that this is a very big concern to some of the constituencies; and others, as you have noted, do not want this provision changed. They believe it is very important.

I think it is also fair to say that this particular provision was known, it was certainly an issue that was very openly debated and discussed, and we have been providing information to States and locals about the fact that we encourage them, as they are doing their annual IEPs, to be looking at the new provision, and as they are developing new IEPs for children that they need to be looking at these provisions. But we are clearly taking your concern and the concerns of others into consideration on this.

Mr. GOODLING. And I will just repeat what I said before, that I am extremely concerned about the number of youngsters who end up in special education programs simply because they cannot read. I am concerned that teachers—

Ms. HEUMANN. And we share that concern.

Mr. GOODLING [continuing]. Are not trained to discern that they have a reading problem and are not trained, then, in turn to do anything about it even if they know what the reading problem is.

Ms. HEUMANN. You know, Mr. Goodling, obviously, representing the administration, we believe that a number of the proposals that the administration has put forward would in fact address this issue, because I think we all equally agree that children who can learn how to read and who are not being appropriately instructed and are therefore moving into special ed is not good for anyone.

We believe the America Reads Program is an important one, that class size reduction is an important issue, the ability to bring in more teachers and to have teachers more effectively trained are all ways of addressing the needs of kids early on so that we can, most importantly, have them be successful in school and graduate and move into the world of work.

Mr. GOODLING. Let me just, the, conclude by saying we do not need 100,000 new teachers. We have 100,000 out there working in McDonald's and the BonTon, which is a department store in my area, etc. But that does not help us with the fact that those 100,000 who are out there now without jobs are not trained to recognize reading disabilities and are not trained to do anything about it.

Ms. HEUMANN. I totally agree with you.

Mr. GOODLING. If you give me help to get the 40 percent, that local district will do everything they need to do about pupil-teacher ratio. We have got to put our money where our mandate is, and then we will solve a lot of the frustrations that are going on out there on all sides if we can do that. And I do not think you can

look at the President's budget in any other way and say it is a cut, because if you look at inflation, and if you look at how many—maybe 100,000, 200,000—new students are coming into the program, we have been going pretty well over the last 2 years, and I do not want to stop now, because it has been a frustrating experience for me as a minority member as a long time. So help us, help us.

Ms. HEUMANN. Let me just say that one of the things that I did as soon as I took this job, when I was going out, doing public speaking, was to discuss this issue of reading. Working with Reed Lyon and Tom Hehir and many others, it was very clear that teachers are not being appropriately trained in how to identify children's reading needs. And having been a former elementary school teacher and knowing the training that I had actually had prior to going into the classroom, teachers have not necessarily been equipped to do exactly what you are talking about. So I think we are in complete agreement on this.

I need to say just one more thing about this issue of the 40 percent. The funding level of 40 percent stipulated by the statute should really be viewed as a goal rather than a commitment or a promise. And I would be glad to submit for the record a series of comments that were entered into the record in 1975 by Republicans and Democrats on the House and Senate sides, dealing with this issue of 40 percent.

I believe that the administration's appropriations proposal was one that was really looking at the entire education budget and believe that areas where we had requested increases would in fact benefit children with disabilities. I know there is a disagreement on that, but I think we have the ultimate goal of providing effective services to disabled children equally in mind.

Mr. GOODLING. Let me just, then, conclude by saying what I said before. I do not read the discussion and the debate that took place when special ed was put into effect as some idea that this would be a dream. I think I read one point that one Senator made that was very, very specific, and in fact, he said we realize that we are usurping the power of the local and the State governments with these mandates, but we are committed to providing that 40 percent of excess cost.

So I do not want us to get away from that, and as I said, you do that, and you solve all those other problems that you are talking about, because then the money is available on the local level; and you also get this division that is getting wider and wider out there in the community, and we cannot allow that to happen.

Ms. HEUMANN. I think you and I both agree that our ultimate goal is to assure that kids are getting good services, that we reduce the unemployment rate of adults with disabilities, and that we allow kids to be successful in primary and secondary schools and get them into higher education and the world of work. So we are in complete agreement on that.

Mr. GOODLING. No question about that. As I said earlier, my commitment here starts out a long time ago with a sister who lost all of her hearing at age 3.

Ms. HEUMANN. Right; I know that.

Mr. GOODLING. Now, at that time, there was no mandate whatsoever; nobody had to do anything. Fortunately, the teacher who had her in first, second, third and fourth grades said, "You will come to school." And she has been a very, very successful person and, at age 80, is still working.

Ms. HEUMANN. And lucky to have had you as a brother, I am sure.

The CHAIRMAN. I would also point out that both Congressman Goodling and I were on the committee that put the 40 percent in there, so we are probably a bit sensitive about our commitment and we may feel a little more guilty than some of the other Members do. We knew that it was more than a goal, but we knew what the problems were going to be.

Senator HUTCHINSON?

Senator HUTCHINSON. Thank you, Mr. Chairman.

I do not think anybody could question the commitment of either Chairman Jeffords or Chairman Goodling, and your sister may have been lucky to have you as a brother, I was lucky to have you as my chairman, and now it is good to be back with you.

I appreciate your indulgence, and I know it has been very long testimony for you, Madam Secretary, so thank you for your indulgence as well.

I want to respond to a couple of things, and I wish my colleagues from the other side were still here, because the suggestion was made that we want to take a step back. I do not think anybody wants to take a step back. And the suggestion was made that there could be 10 days out, 1 day in, 10 days out, 1 day in. That could not happen—right—I mean, instead of taking your interpretation, that could not happen unless there were a violation of the behavior code. A school could not just say, "We are going to keep you out for 10 days, have you back in for a day, and then put you back out again," even under a strict—my interpretation of the law as we wrote it.

Ms. HEUMANN. It was previous practice. Under the amended law, you could not do that.

Senator HUTCHINSON. Under the law that you are trying to implement, you could not do that.

Ms. HEUMANN. Right.

Senator HUTCHINSON. OK. Then, my question is under your proposed regulations—

Ms. HEUMANN. I do want to say that the 10 days in, 1 day out could in fact occur if the proposal that we have in the NPRM were not in place.

Senator HUTCHINSON. Oh—do you mean that—

Ms. HEUMANN. Hold on one second. [Conferring with staff.]

Mr. GOODLING. No, that is not correct. You cannot do that now.

Ms. HEUMANN. You are right.

Senator HUTCHINSON. Thank you. Now, my question is if your proposed regulations are implemented as you are proposing, without change, if a disabled student is placed out and put in an alternative setting for a period of 10 days for some misbehavior, and he comes back, is readmitted, and let us say within that first week he gets into a fist fight. There are no drugs, there is no weapon, but he gets into a fist fight, and he knocks the other person uncon-

scious, and that person is taken to the hospital. What can the school do?

Ms. HEUMANN. He can be suspended.

Senator HUTCHINSON. He can be suspended. What does that mean?

Ms. HEUMANN. Well, first of all, if the school wants to State that that child is seriously likely to injure self or others, then that child could be removed for up to 45 days. And it is clear from what you are saying that that is a possibility, that that child in fact can fall under that provision.

Senator HUTCHINSON. What if a child is imply disruptive in the classroom to the point that no positive education can occur?

Ms. HEUMANN. The answer is that he could be suspended, but before I give the answer, I want to say that what we believe is important here is that we pull the IEP team together, that the IEP team look at whether or not there is a manifestation, that the IEP team look at the behavioral intervention plan and look at whether or not that behavioral intervention plan needs to be revised.

But the answer to you question is a child can be removed repeatedly for up to 10 days, but after suspensions totalling more than 10 days, services must be provided.

Senator HUTCHINSON. Services must be provided. and I think earlier, it was suggested, or at least my understanding of your answer was that this was not an extensive—that you could wait 10 days in order to begin the review process, if my reading of the law is correct; so you have up to 10 days then. Where is the child then? Is he in the classroom, or is he out of the classroom?

Ms. HEUMANN. For the first 10 days?

Senator HUTCHINSON. Well, no—I am referring to—

Ms. HEUMANN. After the first 10 days?

Senator HUTCHINSON [continuing]. You have up to 10 days in order to start the review—

Ms. HEUMANN. The child can receive no services and be at home or on the street or wherever for the first 10 days under the proposed rules.

Senator HUTCHINSON. Now, I am referring to the time after the disciplinary action, when the child is placed out in an alternative setting for 10 days; then, let us assume that the 10 cumulative days have been used for the year. At that point, there is another action that takes place—perhaps he is disruptive in the classroom. And what you are saying is before the suspension can take place, there must be the review, there must be an IEP—

Ms. HEUMANN. No. I am saying that you could remove the child; you would have to be providing educational services. So that after 10 days of no services, on the 11th day, if there is another violation, you would reconvene the IEP, and you would have to be providing services someplace for that child.

Senator HUTCHINSON. But the reconvening of the IEP, you have a 10-day period before you have to have that reconvening of the IEP.

Ms. HEUMANN. For the completion of the review of the IEP; that is correct.

Senator HUTCHINSON. So the IEP has to be completed within 10 days?

Ms. HEUMANN. The review of the IEP has to be completed within 10 days.

Senator HUTCHINSON. So that in section (c), where it refers to the review, "Considering the terms of the behavior subject to disciplinary action, evaluation, diagnostic results, including such results of other relevant information supplied by the parents, observations of the child, the child's IEP and placement, determines in relationship to behavior subject to disciplinary action, the child's IEP and placement where appropriate, and the special education services, supplementary aids and services and behavior intervention strategies were provided consistent with the child's IEP and placement; the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; the child's disability did not impair the ability of the child to control the behavior subject of the disciplinary action"—that all of that must be determined within 10 days?

Ms. HEUMANN. Yes.

Senator HUTCHINSON. And is that workable? My concern is—

Ms. HEUMANN. We believe that it is workable, Senator Hutchinson, and I think that you will hear from one of the witnesses who is going to be coming up that there are States that are doing this—

Senator HUTCHINSON. I think we are going to hear from a lot who say it is not workable.

Ms. HEUMANN. But there are numbers of States that are doing this now.

Senator HUTCHINSON. I just heard Senator Gorton on the floor of the U.S. Senate. He had just come back from the Easter recess; he spent the whole recess time visiting schools, and he said the great concern he heard during that whole 10-day time in which he was visiting the schools in Washington State was the implementation of IDEA and the proposed regs and that the schools are so frustrated and so concerned that there are schools out there that have no desire to harm disabled students but have one desire, and that is to have a safe school environment, and who are so convinced that they cannot do it under your proposed regs that they are prepared to defy the Federal regulations proposed by the Department of Education.

To me, that is a very serious situation where you have responsible school officials who are so frustrated by what you are proposing that they are prepared to defy the Department of Education. So that while we may hear that there is no problem, and everybody is going to be able to implement this just fine, I know that in the State of Arkansas there are many who are deeply concerned that this is not workable.

The only other—

Ms. HEUMANN. Can I say something?

Senator HUTCHINSON. Certainly.

Ms. HEUMANN. Thank you. First of all, I would be glad to have you come and visit with me and with parents in the audience and with principals and administrators who are in fact implementing this law. And I am certainly not saying that implementing this law is easy. I do not think that educating children is easy. I think we are putting a lot of new, appropriate demands on schools for im-

proving teaching and learning for all children, and as we move disabled children into regular programs and into appropriate settings, there is no doubt that there are reasonable challenges that these schools are facing.

But I do want to say that I have visited hundreds of schools across this country where principals and superintendents are coming up to the table and saying: We believe that all children will be a part of the work that we are doing. There are issues and challenges that we have to face, and we would like to work together on addressing those issues.

There are some schools, however, who really, quite frankly, would prefer not to have these disabled children in these schools, and those are not the schools that I believe we should be highlighting. I think we should be highlighting the schools that are doing a good job and allow them to learn from their peers.

Senator HUTCHINSON. I want only this. I want IDEA to be implemented in a workable manner, consistent with the letter of the law that the elected representatives of the people passed.

As I read this, "If a disciplinary action is contemplated as described in paragraph 1 or paragraph 2 for behavior of a child with a disability described in either of these paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children," and it goes on. To me, the plain reading of that is not a cumulative 10 days on multiple acts or multiple incidents. It is 10 days for any violation of a rule.

I am tired of Federal agencies, no matter how well-intended, going beyond the law and the intent of the statutory language that we enact.

Ms. HEUMANN. Let me just make one other statement, please, because maybe I can read this a little more clearly. Once a child has been out for 10 days, the next time a child is suspended, the child must receive services, and the IEP team must be convened; but the school does not have to wait for the team in order to remove the child.

Senator HUTCHINSON. I understand that.

Ms. HEUMANN. So the child can be removed—

Senator HUTCHINSON. What are you reading? These are from the proposed regs.

Ms. HEUMANN. No. This is from a note that was given to me from someone behind me as a clarifying statement.

Senator HUTCHINSON. Well, I was reading from the law, the law that has been passed—

Ms. HEUMANN. I understand exactly what you were reading. And ultimately, again, I think we agree that we want to make sure that schools are safe. You understand, like I do, that this is not the final regulation, that this is the NPRM. And we appreciate your comments, and we will certainly take them strongly into consideration as we do our review.

Senator HUTCHINSON. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Thank you, Ms. Heumann. You have been here for 2-1/2 hours now.

Ms. HEUMANN. And I have to go to another hearing right now.

The CHAIRMAN. You know how important this hearing is, and we deeply appreciate your coming and giving us the best views you have. And we know that you are still in the process of reviewing the regulations, and I know you are going to take into consideration the comments that have been made here, and I am sure someone will be listening to the testimony to follow as you go on to another hearing.

We thank you very sincerely for your efforts.

Ms. HEUMANN. Thank you for all your work.

The CHAIRMAN. I will say that we intend to go right on through with the next panel; I do not intend to take a break. So I will ask the next panel to come forward now.

I have the feeling that there will not be a rush of Members returning here, so hopefully, we can be out of here within an hour or so.

For the information of the next panel, we will be using the lights and would ask you to try to keep your testimony within 5 minutes. I am not going to yank any people from the table if they go beyond that, but at least as a guide, when the red light comes on, please abbreviate your testimony as best you can.

Senator Hutchinson, I believe you wanted to introduce our first panelist, Martha Feland.

Senator HUTCHINSON. Well, let me just say how delighted I am to have Ms. Feland join us today. She is president of the school board in Cabot, AR. I think the Cabot School District is one of our very excellent school districts in the State of Arkansas, and I have had the opportunity on several occasions to visit with school board members as well as interested citizens in Cabot, and I think that what we will hear from Ms. Feland is quite representative of the feeling of many.

I think the difficulty of a United States Senator or a United States Congressman's job pales in comparison to the difficulty of any local school board member; so the kind of sacrifice and service that all of our school board members across the country provide is appreciated.

Thank you for taking time out of a busy schedule to join us, and I want to welcome you on behalf of the Senate and the House. We are glad to have you join the panel today.

Ms. FELAND. Thank you so much.

The CHAIRMAN. As I said, we will turn the lights on, and please try to keep your testimony as close to 5 minutes as you can.

Ms. Feland, please proceed.

STATEMENTS OF MARTHA FELAND, PRESIDENT, CABOT SCHOOL BOARD, CABOT, AR; FRANK P. CLARK, SCHOOL DISTRICT ATTORNEY, LAW OFFICES OF JAMES, SMITH, DURKIN & CONNELLY, HERSHEY, PA; BRIAN A. McNULTY, ASSISTANT COMMISSIONER OF EDUCATION, COLORADO DEPARTMENT OF EDUCATION, DENVER, CO; AND PATRICIA MCGILL SMITH, NATIONAL PARENT NETWORK ON DISABILITIES, WASHINGTON, DC

Ms. FELAND. Thank you, Chairman Jeffords, Chairman Goodling, and members of the committee. My name is Martha Feland, and I am currently serving as president of the school board in Cabot, AR.

Our school board appreciates the opportunity you have given us to comment on the proposed requirements and regulations to implement the IDEA Amendments of 1997.

I initially would like to say that we recognize that there are some very positive changes in IDEA 1997, and we applaud each one of you for stressing improved educational results for children with disabilities.

With regard to the proposed regulations, a major concern is the discipline of children with disabilities. This is probably the number one issue each of you is encountering in your own State. In the Cabot School District, I would like to say that no child, whether disabled or nondisabled, is ever put on the streets, and I think perhaps this might address Mr. Payne's comment—it does not matter the infraction. Our school board has made a monetary and resource commitment to educate every child in a free and appropriate manner. We have established a Second Opportunity School to which we send children who have behavioral problems. We are a firmly committed group to educate our children, and that is our number one concern.

Consequently, I want you to know that our concerns with the regulations do not stem from simply wanting to remove students from the school system, but we are concerned with what appears to be a contradiction within the statute and thus the proposed regulations with regard to the expectations we have for students with disabilities.

On one hand, you have a statute and proposed regulations which make it clear that students with disabilities should be expected, with the aid of specialized instruction, to acquire the same knowledge and educational skills as their nondisabled peers. However, on the other hand, the expectations for student behavior and personal accountability are not the same. A double standard has been created for student discipline. In my experience as a local school board member, we find that we cannot hold students with disabilities as accountable as their nondisabled peers for identical misbehaviors because of these extensive procedures.

In the proposed regulations, the requirement that no student with disabilities can be suspended for more than 10 school days in a given school year without applying all of the additional procedural protections is burdensome and difficult to implement. This requirement seemed to have no basis in the statute. Students with disabilities are much more like their nondisabled peers when it comes to incidences of misbehavior. It is going to happen.

When this occurs, we feel the same consequences should apply. Seventy-five to 80 percent of their time in educational facilities is spent in the general education program. That is why we believe we should not expect them not to conform to our school's code of conduct. It is difficult for us to understand why the proposed regulations impose a functional assessment of behavior and manifestation determination review for any student with disabilities whose further suspension would exceed 10 school days cumulatively within a single school year.

The statute requires such actions only when a student with disabilities engages in misbehavior involving weapons, drugs or dangerousness. This proposed regulatory requirement is unreasonable, in our view, and unduly limits the ability of school personnel to discipline our students equitably.

Another concern is the protections now available to students who have never been identified as disabled. We find that these students, particularly at the secondary level, when faced with long-term suspension or expulsion, take the position that school personnel should have realized there was a possible disability.

If you do not mind, I would like to cite a personal reference. We recently had two young men from our junior high campus who were caught with drugs. Their parents attended the school board meeting, apologized on behalf of their children for the incident, and accepted the punishment of expulsion. However, following the meeting, an advocate approached these parents, and the parents have subsequently requested that their children be considered as having a disability. These were both honor roll students who had never been suspended a single day, never had a behavioral problem, never had an academic problem. We think that that will recur frequently as we get into this.

Another area where we are concerned is with graduation requirements. The statute does not state that all students with disabilities are entitled to a regular high school diploma, yet the proposed regulations impose exactly that—an entitlement. In Arkansas, no student has a statutory entitlement to a regular high school diploma. It is to be earned.

An additional concern is the use of the explanatory notes which follow the regulatory language. The extensive use of notes appears to be an attempt to propose and impose preferred methodology as required practice. The notes seem to further expand the regulations much further than you all intended.

In closing, I want to emphasize that our school board does not have an issue with the basic procedural protections afforded to children with disabilities. At issue are those additional ones that relate to discipline. I urge you to remember that responsibility for implementing the statutes lies with State and local education agencies. I respectfully request that you increase the authority of State and local education agencies equal to their responsibility by, number one, removing all regulatory language which exceeds the statute; number two, eliminating the use of all notes in the regulations; number three, returning decisionmaking authority relative to discipline to public school officials; and finally, establishing the same high standards for behavior as have been established for academic learning.

Thank you.

The CHAIRMAN. Thank you very much.

Our next witness is Mr. Frank P. Clark, an attorney with the law offices of James, Smith, Durkin & Connelly in Hershey, PA, and a constituent of our chairman on the House side, Congressman Goodling.

Please proceed.

Mr. CLARK. Thank you, Chairman Jeffords, Chairman Goodling, and members of both committees.

I come here today from Mechanicsburg, PA. I am an attorney, and one of the areas of concentration in my practice is special education litigation. I have litigated numerous special education cases on behalf of school districts throughout the greater Harrisburg, PA area.

Chairman Goodling told me several weeks ago that when Congress enacted IDEA 1997, one of the goals was to limit attorney involvement in special education. This is a laudable goal with which I agree, because I believe deeply that the worst thing you can do is put a lawyer between a school and a student. But I warn members of the committee that if you think the new regulations proposed by the Department will not increase the involvement of attorneys in the special education process, you are wrong.

I come before you today to urge you that these regulations go beyond the implementation of the Act and will increase rather than decrease litigation, and I ask that you direct the Department to revise the regulations to conform to the new Act.

I endorse the comments made by Ms. Feland, and I see the same concerns that she has. While IDEA 1997 addresses some of the problems that exist in special education, the Department's regulations are going to undo some of these solutions and in fact create new problems.

When you consider the disparity of viewpoints that exist between school and parent advocates, it would certainly have been unreasonable to expect that IDEA would solve all the concerns of either persuasion. Yet it appears here that the regulations largely attempt to take up work that the Department felt was undone by the new Act, and in so doing, the Department does not take careful regard for the process of educating all kids.

What is going to happen instead is great damage to the ability of schools to meet the needs of all students and an unnecessary emphasis on legislation.

I would like to point out some of the areas where I feel the regulations go beyond the language of the statute. I will begin with the section on suspension, Section 300.121. It adds a new twist to the suspension rule, and it now proclaims that FAPE is denied for suspensions that cumulate more than 10 days. It is an expansion beyond the previous statutory limit of 10 days for a single offense. Under the old Act, there was a cumulative limit that was based on a case-by-case review.

For your information, Pennsylvania has in fact legislated its own cumulative limit, 15 days, which provides a bright-line number. I do not recommend this to the committee; I would just point out that that is one process that another State has adopted on its own,

and it has been a workable number that has been in place for several years.

But the new per se rule of 10 days has no basis in statute, and in provides an unworkable basis for counting suspension.

The alternative placement section, Section 300.523, does not implement the intent of the Act. The 45-day placement was clearly intended by Congress to provide a cooling-down placement when a student and parent cannot agree on a setting for a student who puts others in danger. The proposed regulation guts the effectiveness of such placements, because it unreasonably interprets the 45 days as calendar days and, worst of all, it applies the "manifest determination" rules in such a way as to make the 45-day placement a nullity for certain exceptions.

My greatest dispute is the explanatory note to Section 300.325. Let me explain one absurd result from this note that someone is going to exploit. When a school conducts a manifest determination meeting and concludes that there is no nexus between the disability and the Act, the school can then discipline the student as if that student were not a student with a disability.

I would point out, though, that this would almost never occur when you are talking about the emotionally disturbed population; there would almost always be a connection between the disability and the behavior. We can hardly imagine a scenario in which such placements would be operative.

So we have to look at the regulation and the note for when there is a nexus between the disability and the behavior, and the notes to this section suggest that if the school concludes there is a nexus, it should immediately return the student to the former placement, even if the student is on a 45-day placement.

Well, if that is the case, then the 45-day provision would never be used for an emotionally disturbed student; there would never be a 45-day placement, because once that determination of a nexus is made, the student has to return to the former placement.

By implementing this regulation, the Department would effectively undo the 45-day alternative placements that Congress has enacted into IDEA 1997.

I want to talk briefly about attorney's fees. Section 300.513 pertains to attorney's fees, and while its language accurately quotes the provisions of IDEA 1997, it also leaves out the substantial and important new language of IDEA 1997 that limits attorneys from recovering fees in several situations. Considering that most of the language in the regulations essentially parrots IDEA 1997, it is mysterious why the regulations are mute on this obvious change in the new law.

As an overall matter, I would point out to the committees that there is improper emphasis on litigation in IDEA, especially in these regulations, to resolve any disputes between schools and parents. The parent takes a complaint to an attorney, the attorney sees the attorney fee provision of IDEA 1997, and together they lay the groundwork for a complaint and file the complaint. The school sees the complaint, forwards it to their solicitor, and in about a month, the parties are in a hearing, contesting issues that may never have been discussed in an IEP or a multidisciplinary evaluation meeting.

Everyone appreciates the need to move quickly on kids' programs, but the process that we have here rewards contentiousness. Some parents ultimately brag that they will cost the district thousands in the fight, yet whenever I tell a district at the beginning of a matter about IDEA's attorney fee provisions, I am always asked what the district gets if it prevails. The answer, "Nothing," shocks them every time.

The parent-school relationship goes a long way toward affecting a kid's feelings about school. There is no better way to poison that relationship than to dangle the litigation sword out there for parents to extort their wishes from the district. New changes in the IDEA will help in that eventually, some parents will better craft their complaints to refine issues before they get to a hearing, and maybe more will mediate rather than litigate. But the bigger problem is that litigation is a mighty sword that the Act places squarely in the parents' hands with the instruction to go get the district.

Congress should impose mandatory dispute resolution, lengthen the time frame from the complaint to the hearing to enable dispute resolution to work, eliminate the two-step review proceedings with direct appeal to court from a hearing officer, and make clear standards for awarding and denying attorney fees. This would reduce the emphasis on litigation, level the playing field, and not unduly slow down the process.

Thank you.

The CHAIRMAN. Thank you, Mr. Clark.

[The prepared statement of Mr. Clark may be found in the appendix.]

The CHAIRMAN. Dr. Brian McNulty is Assistant Commissioner in the Office of Special Services of the Colorado Department of Education.

Brian, please proceed.

Mr. McNULTY. Thank you, Mr. Chairman.

I am going to apologize to the interpreter right up front, because I am going to go very quickly, so bear with me, please.

I am the assistant commissioner of education of the Colorado Department of Education, and prior to that, I was the special education director of the State for 7 years.

I want to give you a little bit of background about Colorado, because I think it will frame my comments. First, we have a very high rate of inclusion in our State; over 70 percent of our kids with disabilities are educated full-time in the general education curriculum. At the same time, however, we have a very low identification rate of students—I think we rank 48th in the country—so we do a very good job of prevention, and I think that addresses your question about teaching kids to read.

The third point, however, that seems to be brought up is how litigious this Act is, and I do want to frame that just a little bit. I am trying to remember exactly, but my guess is that I think we have only had one case go to court since IDEA, or what was called 94-142, has been implemented in special education.

We have three to five hearings a year. So when we keep hearing about how litigious this is, that is not true in all parts of the country, and again, I think we need to keep that in mind. Why is that in Colorado? I believe that the reason in Colorado is that, number

one, we focus on prevention, we do as much as we can up front for kids and families, and number two, we have a partnership with families.

I will be flying back today because we start a conference for parents in our State tomorrow, and we do lots and lots of work with our families to make sure we understand what our joint roles and responsibilities are.

We also have standards and assessment in our State. They do apply to all students, including students with disabilities. The assessments apply to all students with disabilities also.

In terms of the reauthorization, I want to say that I appeared before Senator Frist's subcommittee, and I was extremely pleased with the way in which the IDEA reauthorization ended up. I really appreciated the focus on higher accountability, on higher expectations for kids, on whole-school models for children.

I also want to say before both of the committees here that we appreciate the funding increases that we have seen under IDEA.

Second, I would like to say that in terms of the work that OSERS and OSEP have done, we were very happy with the expected process in terms of getting those rules out. That was very important for us, and it was a really worthwhile effort on their part.

Second, the technical assistance that has been provided—I have never seen the level of technical assistance that we have received. They came out to our State; twice, we have had visits. They have met with parents and with school districts, and again, I believe their technical assistance is noteworthy.

Let me talk a little bit about the use of regulations. We believe that people rely upon the regulations to provide clarification on the implementation of the Act. They are our guidelines for decision-making, and we go to those regulations very, very often. I believe that clarity in the regulations reduces litigation and does not increase litigation. If we understand what the regulations are about, then we know how to implement them; and by and large, these regulations do that. I am supportive of the regulations.

Let me talk just very briefly about Colorado. Most of the things that are in the current IDEA as reauthorized, we are already doing in Colorado. The 10-day rule, we have already done. Behavior plans, we do. Participation of the general education teachers, we already do. Access to the general education curriculum, standards and assessment—the list goes on. We have been doing those things in Colorado.

Let me talk specifically, though, about discipline and the 10-day rule. We have always interpreted that 10-day rule to mean 10 days in a school year, and it has not posed a problem for us. Usually, the suspensions for kids offer a 2- or 3-day period at a time. After the second suspension, I believe certainly that schools would want to look at whether or not the program is appropriate for the child or not, and they have plenty of time to do that between those suspensions that are going on. So we have always used the 10-day rule, and the 10-day rule has always meant 10 days in a school year for our particular State.

I think the focus is incorrect, to be focusing on the 10 days. We should be focusing instead on the prevention of suspension and ex-

pulsion. In Colorado, we have a behavior plan that goes into effect for all kids—not just kids with disabilities, but any child who is at risk of suspension or expulsion has a behavior plan that is developed and implemented. Why? Because we believe we want to keep kids in school, and we want kids to be able to meet the high standards that we have set. I believe that the regulations set a clear boundary line in terms of being able to do that.

Let me address just one or two other issues, quickly. The first is graduation in terms of a change in placement. It is hard for me to imagine how graduation would not be conceived of as a change in placement. When we consider a change in placement to mean a change in services or a cessation of services, then clearly, graduation represents a cessation of services.

In addition to that, when we talk about graduation, usually, we talk about it in terms of the child meeting the graduation requirements, and many of these kids have not met the graduation requirements, and therefore, to cease their services, I believe would be inappropriate.

Let me end by saying that in terms of participation of regular ed teachers, we have been doing this for a number of years in Colorado, and it has proven to be very, very successful in terms of identifying the modifications and accommodations that these kids need in their general education classrooms in order to access the general education curriculum.

In conclusion, let me say that we can implement these regulations. We have received very little negative feedback on the proposed regs. We are glad to see that the Congress is interested in the regulations, but we are ready to act, and we would welcome your support to do just that.

Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Mr. McNulty may be found in the appendix.]

The CHAIRMAN. Our final witness is our good friend, Ms. Patricia McGill Smith, with the National Parent Network on Disabilities.

Please proceed.

Ms. SMITH. Thank you, Mr. Chairman.

Mr. GOODLING. Turn on the red light.

Ms. SMITH. Mr. Goodling, do not do that to me. [Laughter.]

I am the parent of a young adult with disabilities and a grandparent of two young boys who are presently benefitting from excellent special education services.

I became involved with special education because of my daughter Jane and the need to secure a good education for her. If you look around the room today, you will see that many of my parent colleagues have chosen a similar path. We want to make the road smoother for other parents and families.

I am the executive director of the National Parent Network on Disabilities. NPND provides a voice and a presence for parents of children, youth and adults with disabilities and special needs. We are a network of 60 parent training and information centers, as well as 56 other organizations whose major purpose is to work together to help parents and families and their children.

A detailed response here is to your questions that I received. It was prepared by members of the NPND organization, and they have answered all the questions in my written testimony.

My remarks today are going to focus on the unusual activities that have been surrounding the reauthorization and what has happened since then, the subsequent events that have brought us to today.

You need to know the desperate fear that parents and families are experiencing as a result of the tumultuous threats to the law that we value and that we depend upon for our children. IDEA is a good law, and our children's rights must be protected.

I have heard so many people today talk about all of this tumult that is going on. The parents are about to crack because of what has been happening. I do not think that people have really been paying attention to that nearly as I believe they should.

Last year, following the footsteps of Chairman Goodling—thank you, because you helped with doing what we are trying to do—and the work of the stakeholders' consensus, which we all remember, Senate Majority Leader Trent Lott initiated a process to reauthorize IDEA. The success of this process was due to the creation of the IDEA Working Group that has been mentioned so many times. It included representatives of both the House and Senate, both sides of the aisle, and the administration. But more than that, the critical factor in the process was the inclusion of parents and families and students as full partners to what was going on and educators, et al., who came to Washington, many of them on their own financial resources, to bring the unique information about the educational needs of children with disabilities. And I just want to make a comment. The day that the students came to testify, if anyone was in that room, they will never forget it, because the students were actually the most eloquent of all, as were the young men here today, sitting in the front row, yesterday, as they visited the different congressional offices to tell of their needs.

We worked with Congress to bring this unique information about our children; our message then and our message now is very, very clear: Implement and enforce the law. Everybody who testified—I think every parent who went to the microphone did not sit down unless they said, "Enforce and implement this law." That is what they were begging for, and Mr. Jeffords, we spoke just recently about the need for enforcement of the law.

You came to us, and you told us that the IDEA Working Group and the diverse stakeholders would come to an agreement on the bill, and then, congressional leaders would make every effort to pass the bill, and there would be no amendments at that time or in this Congress. That is what we were told—that now we need to regulate the law, now we need to enforce it, and we would all work together to get increased funding. I remember that part of it real well, and we have all—regular and special education people—have worked to help get that funding secured.

NPND believed you when you said that a deal was a deal. We believed you when you said it was a fair and balanced compromise. We have not come to you since then and asked that you change the provisions we did not like. You know there were provisions that we did not like; we did not come to you with that. But opponents of

the law have worked to undermine it and to influence Congress to break that agreement.

Mr. Chairman, I have observed your remarks and the frustration you must feel, Mr. Jeffords. Instead of focusing on how to create partnerships and implement the new law at the local level, many are focusing on language they do not like in the proposed regulations for IDEA. Instead, they have not been looking for common ground; some are promoting fear and division. This has been happening.

Chairman Goodling, you answered the school board's letter that was in *The Washington Post* last fall, a scathing article about the reauthorization of IDEA, and you and Chairman Riggs answered that letter, and you said: You wanted to get after this law for 20 years; why aren't you glad for the work that we all came to, and why don't you implement it?

It was one of the best letters I have ever seen, and you rightly stated that they should live up to the agreement that we all made. NPND is frustrated as well with the pressure that has been placed on the U.S. Department of Education to reopen the regulatory process and in effect, the legislative process as well. This is inconsistent with the consensus process that result in the IDEA reauthorization and with our understanding of the intent of Congress.

Sadly, it appears that some of the stakeholders who participated in the consensus-building process are content neither to allow the regs to be completed nor to provide sufficient time for the law to be implemented and the impact studied before pressing for destructive amendments. Indeed, NPND is very disheartened that this hearing is even be held. Instead of moving forward to implement and enforce the law, this hearing could be used as a forum to attack IDEA.

As family members and advocates, we are disappointed that a few constituency groups have exaggerated the likely impact of the proposed regulations on school systems while demanding changes that will have potentially devastating effects on students with disabilities. Detractors may claim that discipline policies will only affect children who misbehave in school. Our children are being attacked for having disabilities and, many times, for being different.

Let me tell you about the children. These young people who came here yesterday talked to us a great deal all day long about the things that were happening to them. They want justice. The young men are Chris and Charles and Owen, and they traveled here with their mothers to courageously share their experiences as students with disabilities in the public school setting. What they have experienced first-hand is discrimination and segregation which has come because they have a disability. What they want, as they have plainly stated since they arrived, is the opportunity for a good education and to be able to go to college. Each of these young men feels like he is college material. They want to go to college, they want to reach the American dream.

Two weeks ago, we met with Secretary Riley in response to his comments and questions. We decided to launch a pledge campaign, asking parents and educators to make a commitment to work together to make IDEA all that it can be. We have assembled 126 of the pledges of the over 500 that were received from 40 States

in a very short period of time. Twenty of these came from the Island of Maui, telling us what a wonderful law the new IDEA is. One student had 32 signatures on his pledge from teachers and former teachers. You have to read it to see the list of who signed that boy's commitment page.

These notebooks were prepared for you so that you can see what parents and educators are doing together, and they believe in the law, and they are willing to share their positive experiences with you. There are some really touching notes in these books that we have prepared for each one of you.

In the past few weeks, we have witnessed attempts, one more time, to amend IDEA, and I cannot come to this table today and not mention this; I would be remiss. It was our fear that the proposed amendment would be another attempt to undermine the law.

Senator Wellstone needs to be publicly thanked by parents and families across this country for allowing his amendment to be sacrificed in order to offset the teacher flexibility amendment. We have been fighting these amendments, and we will continue to fight them until we cannot fight any longer.

The National Parent Network on Disabilities appreciates the opportunity to provide input on these important issues. We urge you once again to allow the regulatory process to continue and to support full implementation of the new IDEA before accepting the exaggerated and inflated complaints of a few stakeholders who are attempting to destroy the consensus that you so ably developed during the reauthorization process.

We thank many of you, particularly Chairman Jeffords, Chairman Goodling, Senator Kennedy, Senator Harkin, Senator Frist, for your years of standing up for the rights of people with disabilities. Families and children are looking to you to protect the fragile compromise that the new IDEA reflects. Please do not let them down, and do not let us down.

Thank you. [Applause.]

The CHAIRMAN. I thank all of you very much for excellent and helpful testimony.

Ms. Feland, I would like a little more information about your school district. I know the effective use of resources for maintaining school safety and avoiding litigation are issues that school boards must tackle on a weekly basis. District school policies with regard to suspension bring into play all these issues.

Could you tell us what percentage of Cabot students are suspended from school for more than 10 days in any school year?

Ms. FELAND. Are you including those for drugs and weapons?

The CHAIRMAN. For disabilities—for this purpose, let us not get into the argument of whether those are disability problems—excluding those.

Ms. FELAND. Would you repeat your question—what percentage of students are suspended, or students with disabilities?

The CHAIRMAN. Are suspended from school for more than 10 days in a school year.

Ms. FELAND. I will have to refer to my school superintendent; that is not a figure I would have at my fingertips. If you delete drugs and guns, which are our major issues for suspension—and those are not even issues for suspension—we automatically expel

for possession of drugs or guns. But suspension for more than 10 days, probably less than one percent of the population.

I believe it was Mr. Martinez who said they had a policy in place. We do not have that policy of 10 days, but we rarely suspend a child for more than 2 or 3 days at a time.

The CHAIRMAN. Are those who are subjected to the short-term suspension required to take home school work, homework?

Ms. FELAND. Absolutely. It is their requirement to make up their work themselves. However, if you are suspended from school, you do not receive credit for those days.

The CHAIRMAN. Regular teacher participation in IEP meetings makes good programmatic sense, but has cost implications. How are regular education teachers involved in IEP meetings in your school district now?

Ms. FELAND. We regularly involve regular classroom teachers in IEP meetings. However, should you require IEP rerouting or additional meetings, there would be an expense involved. It would involve substitute pay, that type of thing. However, we feel the issue is more one of training than the issue of financing involving regular classroom teachers, because we feel that classroom teachers have as much impact as special education teachers in that child's education.

The CHAIRMAN. How many due process hearings did you have last year in your district?

Ms. FELAND. We had one.

The CHAIRMAN. Thank you.

Mr. Clark, I would like to discuss with you how we might eliminate or minimize situations that would trigger litigation through final regulations. Do you believe the concerns that have been raised about limiting short-term suspensions within educational services for 10 days in a school year are tied primarily to what is expected on the 11th day?

Mr. CLARK. The way I interpret the regulations is certainly different from what I heard Secretary Heumann explain this morning. I interpreted it, as others have throughout Pennsylvania, that these regulations would have created a complete bar to a suspension of more than 10 days. I heard her explain this morning that you go to an 11th day, but the 11th day required reconvening an IEP meeting and making those kinds of changes.

I still do not see what she said, however, in what I have read in these regulations.

The CHAIRMAN. Chairman Goodling?

Mr. GOODLING. I think one of the most confusing things are the notes. This is the only legislation that I know of where the Department has gotten carried away with notes. I think notes are very confusing not only to the school, but I think they are very confusing to the parents, and I am not quite sure how we got into this business, because when I think about higher ed and everything else that we have done, I do not remember notes playing a leading role in the regulatory process.

One of the things that we have been talking about over and over again is how do we get rid of those notes, because we just do not believe that they are helping; we believe they are confusing.

Dr. McNulty, I know things are magnificent in Colorado. I have been with your Governor on many occasions. Let me ask you a couple questions.

Could you revise, rewrite, all IEPs in Colorado by July 1?

Mr. McNULTY. Could we have every IEP redone by July 1? That would be difficult.

Mr. GOODLING. Could you rewrite every IEP by July 1?

Mr. McNULTY. No. That is what I am saying—I believe it would be difficult to meet the July 1 date, even in Colorado. [Laughter.]

Mr. GOODLING. Mr. Clark, in your last paragraph, I want to say that some of those ideas are ideas that we had on the House side, and fortunately, some of them did not become law.

The young lads who are here today are three very bright young lads. Our problem is that on the one hand, we are talking about those three young people, whose only problem was that they could not read. They are very bright, but they cannot read. And then, on the other hand, we are talking about children who can be a health and safety problem.

I do not know how we deal with the issue when, on the one hand, we want to make sure that these youngsters positively have the opportunity to reach their potential, because if you talk with them, you will find that all three of them are very bright; and then, on the other hand, the responsibility for health and safety in some instances in a classroom. I am not sure how you deal with that situation. I know how you deal with their problem, and that is better preparing people to do the job that we expect them to do. I am not quite sure—well, let me ask Dr. McNulty, have you had very many problems in Colorado regarding health and safety issues as far as some of the children with disabilities are concerned?

Mr. McNULTY. I think what I would say is that we have had problems with behavior, and that behavior is of concern to us, I believe. But it has not just been with kids with disabilities; it has been with many children. And that is why I believe that the inclusion of the behavior plan is so important.

What we need to do is intervene with these students early on, identify the causes of the behavior, and look at a remediation plan for these kids such that we can make them responsible for their behavior. We do believe that those remedial behavior plans have been very, very successful in terms of getting kids to deal with their own behavior and to provide them with the structures and supports they need to do that.

Mr. GOODLING. Mr. Clark, let me ask you the same question as far as your area is concerned.

Mr. CLARK. Well, it is an interesting parallel, because we have the same requirement in Pennsylvania that Dr. McNulty has explained in Colorado. For more than 8 years, schools have been required to implement behavior plans for all kids who are deemed at risk of having any exceptionality, including the emotionally disturbed population. And we have just a wildly different history in cases going to litigation. As he is explaining this, I am thinking about the area where I am from, with about 25 schools, of those 25 schools, I can only think of three school in the past 8 years that have not been to at least one due process hearing.

I am working with one district now, with less than 1,050 students in the school, and they are in their third due process hearing since January of 1997, which is absurd—and it is not a reflection on the ability of those districts to meet the needs of those kids. That is the crazy part.

Mr. GOODLING. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Harkin?

Senator HARKIN. Thank you, Mr. Chairman.

Mr. McNulty, I want to make sure I have this straight. You said the State of Colorado is already doing a lot of the things that would be required under the proposed regulations; is that right?

Mr. McNULTY. Yes, that is correct.

Senator HARKIN. You said you already provide services to children who have been suspended for more than 10 days in the school year even if they have only received a short-term suspension.

Mr. McNULTY. Yes.

Senator HARKIN. And you go to a behavioral intervention plan after a child's first suspension, even if it is only for a day or two.

Mr. McNULTY. We actually try to do it before they are suspended.

Senator HARKIN. And you said your regular education teachers participate in IEP meetings.

Mr. McNULTY. Yes, they do.

Senator HARKIN. Based on your real life experiences are these regulations workable?

Mr. McNULTY. Yes, they are very workable. As a matter of fact, we have been doing most of them for a number of years already.

Senator HARKIN. I have got to tell you I have read the testimony—I missed yours because I was out, but I heard the last two, and I read all of them—and listening to Arkansas and Pennsylvania and now Colorado, I am wondering—do we all live in the same country? Is this not the United States of America?

Again, it brings to mind a case we had in Iowa a few years ago in West Middle School in Sioux City, with 650 students, 72 percent of whom come from homes considered at or below the poverty line, 28 percent minority, 32 percent are children with disabilities who have IEPs. That is high, isn't it? Thirty-two percent.

Prior to the date that Mike McTaggart took over as principal, the 1 year prior—listen to this—the 1 year prior, the school had 692 suspensions, 220 of which involved disabled children. The absenteeism rate was 25 percent, and there were 267 referrals to juvenile authorities. That was 1 year prior.

Dr. McTaggart took over, and 1 year later, the number of suspensions of nondisabled children went from 692 to 156, the number of suspensions of disabled children went from 220 to zero. Attendance went from 72 percent to 98.5 percent. Juvenile court referrals, as I said, went from 267 to three.

I went out and visited that school, and I asked what happened. What happened? The laws did not change. We did not do anything different. The State did not do anything different. Well, he said, we just enacted a different philosophy. We looked at prevention first and getting in front of the problem. We made sure the teachers were trained. Our philosophy of discipline was to use discipline as a tool to teach rather than to punish, and that it takes a whole vil-

lage to raise a child. We brought in the parents, and we got the teachers together. And look at what happened in 1 year.

I guess what that illustrates to me, and listening to you, is that if a State and the people who run their education system want to make it work, they can make it work. On the other hand, if we want to litigate, if we want to polarize people, you can go that path, too, and you can have all kinds of problems.

I just think that that is an example of what I mean. If you want it to work, and you want it to work reasonably well, and you understand the constitutional requirements that have been set upon us not to discriminate—if a State provides a free and appropriate public education to all kids, it cannot discriminate on the basis of race or sex or religion or disability—if we understand that, and we work together in common concert, then we can accomplish these things just like Mike McTaggart did at his school. There is no secret to what he did. It is called decency, and it is called common sense and understanding.

Ms. Feland, I read your testimony, and I have a letter here that you wrote on January 15, 1998, which you signed. It is on Cabot Public School stationery, and you write, and I quote from the letter, that "Children with disabilities will ultimately suffer the most from these divisive Amendments. Unfortunately, implementation of these Amendments will polarize our patrons when the predictably harsh backlash from parents of children without disabilities occurs." That is the end of your quote.

A couple of years ago, we were told by the national PTA that IDEA is only divisive when there is a lack of communication and understanding among interested parties. So it troubles me to hear you talk about IDEA Amendments creating a backlash against children with disabilities. Wouldn't we be better off if school boards like yours worked with all parents to foster understanding and togetherness rather than fueling fires of divisiveness?

Maybe the State of Arkansas needs to send some people out to Colorado to see what they are doing. [Applause.] I really mean that sincerely. It may come across as light, but it was not; I mean that in sincerity. We learn from other States. In my State of Iowa, we go and look at other States to see what they do and how we can adopt it better. If Colorado is doing it, I would suggest, Mr. Clark, Ms. Feland, that maybe you ought to look at how Colorado is doing it. Maybe it could be helpful. I did not mean it in a light sense; I mean it sincerely. Look at what Colorado is doing. Maybe it could be helpful.

Do you think that might be a good suggestion, Ms. Feland?

Ms. FELAND. We are envious of Colorado's track record. Our concern—you mentioned the backlash—our concern has been that when you bring three children before the school board for identical circumstances of behavioral problems, you can discipline two of them in one way because they do not qualify as disabled students, and you have to discipline the third one differently because he or she does qualify—I am not talking about a child whose disability is visually obvious, but perhaps a child who attends one resource class a day. That is very difficult for parents to understand. It is difficult for us to explain as school board members.

Senator HARKIN. I know it is difficult sometimes for parents to understand, but that is where communication and bringing parents in to discuss these things comes in. I cannot tell you how many times I have been confronted with situations in my own State with school boards that have come up with these horror stories on discipline, and I have gone out of my way to track them down and find out what was going on. I had one case that lingered for almost a year and a half—and I can give you all the documentation on it—and I finally got the principal and the head of the school board to say that it was not quite like they thought it was.

People get these fears, and they get emotionally distraught and so on, and we have to track them down, and once we track them down and ferret out all the information, in every case that I have tracked down, it has not been as it was initially presented.

The CHAIRMAN. Senator, I will come back to you.

Senator HARKIN. Well, I will just say one last thing. In your letter, you said: "The authors of the Amendments obviously believe that students with disabilities have the right to be taught everything that education has to offer, except that misbehavior carries consequences." You stated that in your letter.

Do you really believe that the parents sitting in this room do not want their kids to learn right from wrong? I do not know of any parent who does not want his child—I do not care what disability he has—who does not want his child to know right from wrong.

Ms. FELAND. I believe that the majority—I would dare to say every parent in this room—feels that way. There are exceptions, extreme exceptions, to that rule—we encounter them, unfortunately, weekly, if not more often on a regular basis in the school system—who do not hold their children liable for their behavior.

Senator HARKIN. Again, I can understand that human nature varies and that there will be people like that, but I do not think you can cast it as a blanket over everyone, that we, the authors of the Amendments, believe that students should not be taught right from wrong. I was one of the authors of the Amendments, and I do not believe that, and I do not think Senator Jeffords or Congressman Goodling or anybody else believes that, either.

So I would hope, again, that these kinds of letters would be fewer in number in the future with that kind of language.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Hutchinson?

Senator HUTCHINSON. Thank you, Mr. Chairman.

Ms. Feland, I want to compliment you on how well you have represented the State of Arkansas and for your very thoughtful and very responsible statement and how courteously you responded to what were, I think, some very unfair statements and characterizations of our State. So I compliment you, and I commend you for that. And I want to say that the letter that was cited is quite representative of hundreds of letters that have been received by Senators on both sides of the aisle and from every State in the Union.

I was on the floor of the Senate this morning—I referred to this earlier—when Senator Gorton from Washington State referred to his visit to scores of school districts across his State in the last 2 weeks of which this concern, the concern about the backlash that you referred to in the letter, was mentioned by school officials and

by parents. So I think your letter was not divisive; it was reflecting genuine concern, and it was done in a thoughtful way, and the restraint that you have displayed today as a witness is to be commended.

Dr. McNulty, you say people rely on regulations, people depend on them, and that clarity in regulations reduces litigation. Would you consider yourself a regulator?

Mr. McNULTY. No. I would consider myself a person who provides lots of technical assistance, although we do do monitoring for compliance, also, so that certainly is a part of our role.

Senator HUTCHINSON. I would think compliance and enforcement would be regulatory, would they not?

Mr. McNULTY. Yes.

Senator HUTCHINSON. OK. Do you agree that regulations should be strictly in accord with statutory language?

Mr. McNULTY. Yes, I think that they should be in accordance with the language but also the intent of the statute.

Senator HUTCHINSON. Right—which is somewhat subjective at times, right?

Mr. McNULTY. Right.

Senator HUTCHINSON. So you would not favor regulations that would exceed or go beyond what is written in law by the elected representatives of the people.

Mr. McNULTY. No, they should not go beyond the law. They should interpret the law so that we can understand what the law means, though.

Senator HUTCHINSON. All right. And, of course, there are many others who believe that the interpretation that administrative agencies are employing today, not just in the Department of Education but in many areas, goes beyond, well beyond, the intent of congressional language.

Is your position in support of the proposed regulations representative of directors of special education across the country?

Mr. McNULTY. I would not purport to represent the directors of special education, no.

Senator HUTCHINSON. And we have already heard that Colorado is kind of a unique State, in a unique situation, so I do not guess we would want to broaden your characterization today as a witness to represent the position of all State departments of education and special education.

Mr. McNULTY. No, I would not say that; I would represent everyone.

Senator HUTCHINSON. You mentioned that in Colorado, graduation is considered to be a "change in placement," and the proposed regulations support what you are currently doing. Your position seems to be contrary to that expressed by the majority of State officials. The National Association of State directors of Special Education commented that the requirements are, quote, "costly, burdensome and unnecessary." They argue that there is no benefit to requiring a reevaluation of the student at graduation.

Could you explain to me what benefits you see in going through this exercise?

Mr. McNULTY. I believe I can. When you look at what constitutes a change in placement, a change in placement usually refers—and

this is at least by case law—to a change in services that the child receives. So if we were, for instance, to change a child's IEP by cutting out a service or by eliminating a service—say, speech therapy—and we just decided to do that, that would be considered a potential change in placement. In order to not do that, we would go into an IEP meeting, and we would review what services the child needs in order to clarify on the IEP what our requirements are.

When we look at a broader level of service, like eliminating all the services that a child would receive, it only seems reasonable to go into an IEP meeting with the family to say we see your child graduating—and I am using that term loosely, because oftentimes—and I think this was clarified in the regulations—we use things like “certificates of attendance” or “certificates of completion,” which do not mean that the child has met the graduation requirements, but just mean that the child has been there. And a child's services, then, could end at age 18, without ever having met the real graduation requirements.

So it seems to me reasonable to assume that you would want to have an IEP meeting where you bring in the family to review what the child has met, which of the IEP goals has the child met, look at the transition plan, and assure that you have addressed the services that were in that plan. If you have, then the child could graduate; if you have not, and the child has not met the graduation requirements, I believe that that would be the purpose of that IEP meeting.

Senator HUTCHINSON. OK. I appreciate understanding the rationale, and I would just mention again that apparently, it is in conflict with the National Association of State Directors of Special Education, who feel that it is costly, burdensome and unnecessary.

You mentioned that in Colorado, you already require the participation of the general education teacher in IEP meetings. Does Colorado require the physical presence of the general education teacher at each and every IEP meeting, whenever they occur?

Mr. McNULTY. The general educators would attend the meetings if they had information to include. There is a requirement for them at the initial IEP meeting, certainly, to attend, and they would attend any other meetings where they had required information.

Senator HUTCHINSON. So it is not true that they are required to participate in every IEP meeting.

Mr. McNULTY. They may not attend if there were a review meeting, for instance, that was asked for; but usually, the general educators do attend every meeting.

Senator HUTCHINSON. If they have relevant information.

Mr. McNULTY. Right.

Senator HUTCHINSON. So they are not physically present at every meeting. To your knowledge, have there been any problems caused with scheduling of teachers and ensuring that classes are covered during those IEP meetings?

Mr. McNULTY. Certainly, there have been occasions when that has been a problem, but by and large, that has not been a big problem. Most of the time, when we have IEP meetings, we have them following school, such that everybody can attend.

Senator HUTCHINSON. The phrase, “access to the general education curriculum,” is or referenced in multiple places and dis-

cipline provisions to give school districts some flexibility and to facilitate implementation and compliance. Do you think that in order to do that, we should allow that definition of "access to general education curriculum" to be left to the local school districts and the State education agencies to define?

Mr. MCNULTY. Well, I think the way that it is defined in the regulations really talks about the content, that they will have access to the curriculum, and it talks about just access to the curriculum. So I do not find that to be a problem in terms that it does not impose a curriculum at all. The curriculum is still defined by the local school districts in our State. But having access to that curriculum means that students with disabilities are going to be addressing that curriculum.

Senator HUTCHINSON. I think the question is whether we ought to be defining it, whether the Federal Government ought to be defining what a general curriculum is and what access to general education curriculum is; and should we leave that to the local school districts.

Mr. MCNULTY. Well, I do not think that you are defining what the general ed curriculum is—

Senator HUTCHINSON. That, we can differ on, but you would say that that would not be appropriate; that should be left at the local level.

Mr. MCNULTY. I think that the local curriculum is defined by the local school district in our State, yes.

Senator HUTCHINSON. And access to it.

Mr. MCNULTY. Well, access to it I think is required by the statute.

Senator HUTCHINSON. The definition of access—

Mr. MCNULTY. I think all that definition says is that it is related to the content of the curriculum. That is all it is talking about is the content of the curriculum.

Senator HUTCHINSON. So that what that means, "access to the general education curriculum," should be left to the local school districts to have some flexibility in defining that.

Mr. MCNULTY. No. I believe this clarifies the language of the statute.

Senator HUTCHINSON. So, then, you would support defining it at the Federal level.

Mr. MCNULTY. Yes, yes.

Senator HUTCHINSON. Thank you.

I do have a few more questions, but I know that my time has expired.

The CHAIRMAN. Let me just ask one question of all of you on the 10-day and the 11th day thing which worries me, because it sets in motion all sorts of things.

Suppose a student were suspended for 9 days the first month and then was suspended on the next-to-last day of the school year. Does it make sense to trigger all these things that must go on when the school is only going to be in session for one more day? I think if you go to the absurd, you kind of wonder about the rigidity of it.

Does anybody have any comment?

Mr. CLARK. I will comment. In Pennsylvania, all the school administrators I have ever encountered are people of great decency and common sense, as Mr. McTaggart in Iowa, and I think they would all look at that situation and say it would be crazy to reconvene meetings at this point in the year and go through the process anew.

Mr. McNULTY. I would beg to differ. If it is the last day of the school year, it is the last day the students are there. Staff is still there at the end of the school year, and you would certainly want to reconvene an IEP meeting such that you could look at why are we experiencing these behaviors in preparation for the fall of the next year. Why wouldn't you want to have a meeting where you were planning for the next school year so that it does not happen again?

Mr. CLARK. But that IEP is already being reviewed in the course of the year. The IEPs in Pennsylvania, at least, are being reviewed on an annual basis, so there has already been an IEP that has been developed and is being put in place for the next school year.

Mr. McNULTY. Well, the IEP could be reviewed in December, and the behavior could happen in January, and then you would have to wait until the following December before it was reviewed.

Ms. SMITH. I have to answer that question.

The CHAIRMAN. Yes.

Ms. SMITH. My daughter was suspended the last 5 days of school. I have actual knowledge of what happens when that occurs. My daughter has had challenging behaviors for almost all her life, and 1 year when she was in high school, she pushed a bus driver, which of course, you do not want them doing. The principal said, "I am suspending you." It made the principal very angry, and he said to me, "We are suspending her this time for 5 days, because we are going to have a real peaceful end of this school year, and we will just get her out of here for the 5 days."

I think that in my memory, that is probably the maddest I have ever been at any educator that I have ever met—and people who know me know that I do really well with educators. I have done all right with them. I spent that whole summer working with that school district, and the truth of the matter is I was going to take them to court, but I did not have to, because they finally came to me and said, "Would you quit appealing our throwing your daughter out, because regular education is what you are using"—this was 7 or 8 years ago—and I said, "I do not care if I am using regular education. You did it to my daughter, and I can appeal everything you have got."

They finally came to me and said, "OK, you win. What can we do to help you with your daughter for next fall?"

That is what we did, and then we made a plan, and for the next 4 years, Jane went to regular education classes, two a year, and in the 4 years that she went to two classes per year, I never once had a report of bad behavior on her part in those two classes four times a year, and she even got an "A" in the home ec class, where she never had had an "A" in anything before.

So you have just hit a hot button with this mother when you ask if you know anything about somebody getting suspended the last day, because that is what happened to us. And I think that Dr.

McNulty is correct that you would spend some time looking at what the heck happened, so that when you go in next fall—so you have to reconvene your IEP team, or maybe you have to talk to a behavior specialist or somebody, and say, okay, if this is going to happen, why don't we take a look and see if we can get it so that it does not happen next year—because what happened to my daughter made a huge difference in her life because she did not experience any real “integration,” they called it in those days. Now we hope it is “inclusion.” It was not really “inclusion”; she was “integrated.” And it helped her as an adult to have had at least that much integration in school.

The CHAIRMAN. Chairman Goodling?

Mr. GOODLING. Yes. I just wanted to tell Dr. McNulty that, if I understood him correctly, I will have him in court on July 2nd if he tries to give out a “certificate of attendance.” I will guarantee him that.

Ms. SMITH. Could I make one comment about the general hearing in toto? I wish that people would try to think in terms of using common sense. One of the things that we seem to have gotten so far away from—when you said we had a “love-in” last year when it finally came to conclusion and being able to sign into law the IDEA Amendments of 1997—a lot of what I have heard all day today and what I hear so often is that common sense is not applied. And I know you have got to have regulators, I have you have got to have lawyers—but you have heard the incident that I just described to you about my daughter. We did not go to law, we did not go to court. We worked until we worked the problem out on her behalf.

And oftentimes, I am sorry, I am quite provoked with all sorts of people, because I think they have not been using common sense to address the needs. And the families who are sitting out here and the kids who are sitting out here will use common sense if you give them the chance.

There was not much said about mediation today, and I wish there had been. The new provisions of mediation in the law are going to be extremely, extremely beneficial. Nobody is talking about that. They are saying, oh, we have got to get a lawyer, we have got to go to law, we have got to go to court, we have got to do this. No. Parents do not want to go to court. We do not want to be going out, hiring lawyers.

Help us to mediate the problems and get our kids in school and serve them. This is what needs to happen.

The CHAIRMAN. Since those were my provisions, I obviously agree with you, but I think common sense is what I was trying to raise with the last issue that we can take a look at it two ways. I think Mr. Clark could be just as accurate as you are with your daughter, and if it is a one-day suspension for a minor thing, why do you want to trigger all the—there should be some discretion in some of these things to allow common sense to prevail rather than having a rigid system. There is a requirement for annual review of the IEP, for instance, so it might be foolish to do it twice in a row or within a month—all those things. That is the point I was trying to make.

Any further comments? Senator Harkin?

Senator HARKIN. Mr. Chairman, just one final thing which is tangential to this. I was reviewing the testimony at home last night to get ready for the hearing, and I have a daughter who is a junior in high school, and I asked her, "Jenny, just out of curiosity, what do you think about suspension?" I did not mention disability or anything, but just "What do you think about kids being suspended from school?"

She asked for what, I said for acting up and disturbances and things like that.

She said, "That is dumb. Usually, for a lot of those kids who are acting up, if you suspend them and send them home, it is like a vacation for them. They do not want to be there anyway. What they should do is put them in a class and keep them in school and make them sit in that class all day and do work."

So I guess I have got to say that philosophically, I have been thinking about this, and when I was a kid in school, we were sent home and things like that—and I will not tell you how many times I was; I do not want to get into that—but it just seems to me that we talk about suspension as sort of the normative, and I have just got to say again for the record that I think suspending a kid from school, whether disabled or nondisabled, has got to be one of the dumbest things we do in this country. I agree with my daughter Jenny, and I just wanted to say that for the record.

Senator HUTCHINSON. Mr. Chairman, I just want to say for the record that, as the father of three sons, who has had children face in-class suspension and out-of-school suspension, that both of them have a place, both of them have a role, and that we had better keep all the tools available for school teachers and administrators. There are different levels of discipline. There is a time at which the embarrassment or the requirement to be placed out of school and to do the homework and to come back in with that homework done can sometimes be effective, and I would not want to just make a blanket rule that it never works or should never be used.

Senator HARKIN. Well, I would just gently disagree with my friend from Arkansas. I just do not think that that is at all a tool to be used for kids to teach them that education is important—to send them home. We just disagree on that. I think that doing it in school—segregating them out and putting them in another room for the day and making them do work—is fine. But to send them home, we just have a disagreement on that.

Senator HUTCHINSON. We do indeed.

Mr. Chairman, I wanted to ask Mr. Clark one additional question. Ms. Smith said no parents want to sue. I just wonder if that has been your experience, Mr. Clark. Have all your clients had that same attitude about filing a lawsuit or litigation?

Mr. CLARK. If that were the case, Senator, I would be a poor man, and my districts would be much happier.

Senator HUTCHINSON. And as an attorney who has represented both parents and school districts, do you believe that attorneys discourage the use of mediation to resolve dispute regarding a child's education?

Mr. CLARK. I have not seen that personally. I have spoken with school people who have suspected that of some parent lawyers. Thankfully, I have not observed that myself. I worked out a case

not too long ago with an attorney from Pittsburgh who has been very accommodating, attempting to essentially help me mediate the difference between his client and my client, and so far we have been successful. I wish all my cases worked out that way; sadly, they do not.

Senator HUTCHINSON. Thank you, Mr. Chairman.

The CHAIRMAN. I thank you all. All Members will have an opportunity to include statements for the record, and in my case, an extended statement will be made a part of the record without objection.

[The prepared statement of Senator Jeffords follows:]

PREPARED STATEMENT OF SENATOR JEFFORDS

Less than a year ago, Congress passed and the President signed into law P.L. 105-17, the Individuals with Disabilities Education Act Amendments of 1997. It took much of the last Congress and four solid months of work in this Congress to produce a strengthened law that would give parents and educators the tools they needed to help children with disabilities receive a quality education. Day after day, the Administration, House and Senate Democrats and Republicans sat at the table in an unprecedented effort to achieve consensus on legislation.

The consensus we achieved must be rekindled. The communication and mutual respect that brought us a strong law must be applied in this final phase of the regulatory process. If we do not reestablish last year's partnerships and find common ground, fear, division, and efforts to amend IDEA will become commonplace. That is not good for kids with disabilities. We have to get things back on track.

Actions speak louder than words. Regulations, to work, must reflect clarity and flexibility, and be consistent with law. It is my hope that by having a frank and open discussion about the proposed IDEA regulations, we will facilitate the development of final IDEA regulations that are clear, flexible, and consistent with the spirit and intent of the 1997 IDEA amendments and good faith negotiations that led to the new law.

Clear, flexible regulations, that are consistent with the statute, that everyone can understand, will do a great deal to reduce the tension that parents and educators of children with disabilities are now experiencing. This hearing offers everyone an opportunity to discuss major issues that have arisen since the issuance of the proposed regulations on October 22, 1998. It is my hope that today we will identify some common ground that will substantially impact on the final regulations for IDEA, lead to new partnerships between parents and educators at the local level, and result in improvement in educational services for students with disabilities.

By holding this joint hearing with my good friend Bill Goodling, Chairman of the House Committee on Education and the Workforce, we offer stakeholders an opportunity to tell us their opinions on the proposed IDEA regulations.

We have asked witnesses to address specific provisions in the proposed IDEA regulations. I would like to offer observations on how and why some of these provisions could be addressed in the final regulations.

It is my view the final IDEA regulations should clearly identify a range of acceptable options for providing educational services when a student with a disability is subject to short term suspension. The concerns that have been raised about limiting short term suspensions without educational services to "10 days in a school year" are tied primarily to what is expected on the "eleventh day". If schools could be given discretion over the nature and level of educational services that would be provided on the eleventh day, if only a short term suspension was involved at that point, the contention over "ten days in a school year" could be resolved.

I believe the final IDEA regulations should clearly establish what "had knowledge of disability" means, when a child has not yet been found eligible for special education and related services and violates school discipline policy. Requiring written documentation of knowledge would seem to be a simple solution.

It is reasonable to expect the final regulation should clarify when schools must conduct manifestation determinations and behavioral assessments and intervention plans. This clarification would clearly ease implementation and compliance with the discipline provisions.

The final regulations should set the time line for expedited due process hearings of sufficient length to allow the timely compilation and consideration of the facts. Perhaps the defining of such time lines should be left to States.

I believe that the final regulations should leave the definition of "access to the general education curriculum" to local school districts and State educational agencies, given the diversity of meaning in the term "general education curriculum".

The final regulations should not modify the "stay-put" provision in the law, beyond that allowed in connection with the discipline provisions.

The final regulations should clarify: when parental consent would be required for evaluation activities; what would constitute a "re-evaluation"; and what would constitute "regular education teacher participation" in IEP meetings.

The final regulations should not include policy interpretations that are based on policy letters that are obsolete or unnecessary or include policy interpretations that have no statutory basis.

For example, the proposed IDEA regulations characterize of graduation of a child with a disability as a change in placement, requiring parental consent and a comprehensive reevaluation of the child. The 1997 IDEA amendments strengthen the parent involvement, the IEP, and the accountability provisions in IDEA. These new provisions make the need for regulatory text, based on an old policy letter, obsolete.

Also, the proposed regulations, using the justification in a policy letter and not the statute, allow children with disabilities, who turn three-years-of-age in the summer, as having automatic consideration for extended school year services. Since parents of toddlers have the option of continuing services under an individualized family service plan (IFSP) or developing an individualized education program when their toddler turns 3, parents whose toddlers turn 3 in the summer can ensure the continuation of services under an

IFSP. Thus, the proposed regulatory text creates new expectations and burdens that are unnecessary.

The proposed regulations, without any basis in the statute, authorize hearing officers to award attorneys' fees. The inclusion of this authorization in the final regulations would clearly represent a policy interpretation that lacks a statutory base.

I look forward to hearing the Department's rationale for these selected regulatory provisions and the views of all witnesses with regard to the final disposition of IDEA regulations. If we can sort out together how the regulations should and must work when in final form, we can fulfill the promise of last year's law. I hope everyone with an interest in children with disabilities and their future, will help us find, once again, the common ground on which we stood last June.

Now, I turn to my friend Bill Goodling for an opening statement.

The CHAIRMAN. I want to thank all the witnesses here today and all the people who have attended and exercised their right of free speech occasionally, which is a perfect part of the process.

This is a very important hearing today, and I hope it has allowed the issues to be raised and discussed and hopefully, they will give guidance to the Secretary of Education when the Department comes forth with final regulations.

I especially want to thank the witnesses on the final panel, who have brought us different, very helpful perspectives. I wish you well, and I will reserve the right to ask you a question or two after you have gone home, if you do not mind, as we go forward, trying to make sure that what we did this past year was worthy of the great consensus it had. I believe it was, and I am sure that, working with the Secretary, it will turn out that way.

Thank you very much. The hearing is adjourned.

[The appendix follows.]

APPENDIX

PREPARED STATEMENT OF JUDITH E. HEUMANN

Chairman Goodling, Chairman Jeffords, and Members of the Committees, thank you for the opportunity to appear at this joint hearing of the House Committee on Education and the Workforce and the Senate Committee on Labor and Human Resources. You have invited me to discuss the Department's development of the regulations necessary to implement the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97).

The extraordinary bipartisan and bicameral process through which the IDEA '97 statute was developed was at times difficult and contentious; but the end result was a fair bill that reaffirms the constitutional right of children with disabilities to an equal educational opportunity and at the same time recognizes the legitimate concerns of State and local educational agencies responsible for implementing the law.

The main thrust of my opening remarks is to share with you the process we in the Department followed in developing the Notice of Proposed Rulemaking (NPRM), and are continuing to follow in developing the final regulations for the Part B program. But I would like to say from the outset that the IDEA '97 improves and reforms special education in a very crucial way—to link it more closely to general educational reforms and to help ensure better results for children with disabilities—first, by ensuring their participation in the general education curriculum with non-disabled children (to the extent appropriate); second, by requiring increased accountability through participation of these children in State and district-wide assessments; and third, by providing for increased participation of parents in a meaningful way in major aspects of their child's education.

The statute also helps to ensure that schools are safe and conducive to learning for all children in school. And it is further directed toward reducing paperwork and burden to the greatest extent possible.

When IDEA '97 was signed into law on June 4, 1997, we in the Department felt a great responsibility to the parents, the disabled children, and the education community to move rapidly to promulgate clear rules and to include interpretations of general interest and applicability to accompany the proposed rules.

But we were also committed to ensuring that we would regulate: (1) only when necessary to improve the quality and equality of services to children with disabilities of all ages; and (2) when necessary to facilitate implementation in the field. When regulations, in fact, are necessary, our goal has been to strive for flexibility, equity, and limited burden. We have consistently tried to adhere to these principles.

In the development of the NPRM, we used a collaborative approach by seeking input and suggestions from a wide constituent base representing all groups and individuals that have a vested interest in the education of children with disabilities. For example, we thought that it was important to get input from the field on what should go into the proposed regulations, and to help ensure effective implementation of IDEA '97 at the State and local levels. And so we did several things:

(1) Throughout June and July, we conducted a series of meetings with interest groups (including parents, school boards, school administrators, and teachers) to solicit input on IDEA implementation and on issues that might be addressed in regulations.

(2) On June 27, three weeks after the law was signed, we published a notice in the Federal Register requesting from the public advice and recommendations on regulatory issues under IDEA '97. By the end of August, 334 comments were received in response to the Notice, including letters from parents and public and private agency personnel, and from parent-advocate and professional organizations. The comments addressed most of the major provisions in IDEA '97 (such as new funding provisions, discipline procedures, provisions relating to evaluating children, individualized education programs [IEPs], the participation of private school children with disabilities, and methods of ensuring services). All of these comments were carefully reviewed and considered in developing the NPRM.

(3) We arranged for six regional workshops for State directors of special education to receive training on the new statutory requirements. These sessions also afforded State directors a opportunity to raise comments and concerns about the statutory provisions and make suggestions on areas where further clarification might be helpful.

(4) The Department's monitoring staff conducted on-site meetings with each State educational agency, at which each State would bring together its own constituencies to develop steps for local implementation of the new IDEA statute.

(5) Because of requests from the field for initial guidance regarding the removal of students from their current placement for 10 school days or less, the Department drafted a "Question and Answer" document on the issue.

In addition, as part of our open collaborative process, the Director of Special Education Programs, Dr. Thomas Hehir, and I have made numerous presentations at national conferences of groups involved in education for children with disabilities, as well as many State-wide meetings involving local directors of special education, representatives of institutions of higher education, and others interested in the education of children with disabilities.

While carrying out these efforts to ensure active and meaningful involvement of the general public in developing regulations and implementing the new law, we were able to draft the proposed regulations and have the NPRM on the street in just over four months from the date that the bill was signed into law. That was an enormous accomplishment requiring a tremendous commitment of staff time and effort. We set ourselves a very ambitious schedule with the goal of having final regulations in place by this Spring, and I believe our publication of the NPRM was among the most prompt such actions taken for any program of similar complexity.

The NPRM was published on October 22, 1997. Immediately following its publication, we conducted seven public meetings—in Boston, Atlanta, Dallas, Washington, DC, San Francisco, Denver, and Chicago.

As of January 20 (the end of the 90-day public-comment period), we had received over 4,600 written comments from a very wide range of individuals and organizations with an interest in the education of children with disabilities, including letters from virtually every major national advocate and professional association, and letters from individual parents, persons with disabilities, teachers, administrators, and others.

We have received approximately 50 letters from Members of the Congress, including the letter of January 20th to Secretary Riley from Chairman Goodling, Chairman Jeffords, Chairman Riggs, Senator Coats, Senator Frist, and the Majority Leader commenting on the Department's NPRM. In addition, we have met a number of times with Congressional staff to answer questions regarding provisions in the NPRM about which you had concerns. We viewed these meetings as helpful and productive.

The statutory language added by IDEA '97 and the technical assistance materials included in the NPRM make up nearly 60 percent of the entire NPRM. The remaining 20 percent of the NPRM included language that was used to clarify specific statutory provisions in order to facilitate implementation of the new provisions and to include in the Federal Register longstanding Department interpretations of general interest or applicability, including interpretations that were followed during the Reagan and Bush Administrations. We think this approach is sound and helpful, because it provided everybody a opportunity to comment on these clarifications and interpretations, and because it combines all relevant material into a single, user-friendly document.

The comments, as a—whole, responded to many sections of the regulations, including those reflecting changes made as a result of IDEA '97 (for example, on discipline, IEPs, and procedural safeguards). We also received many comments on items from the current regulations that were not changed by IDEA '97.

Many people had not reviewed carefully the current IDEA regulations in some time, and assumed that a number of provisions retained from the current regulations were new requirements. The NPRM has provided many constituents with an opportunity to take a good, hard look at the IDEA requirements. This has challenged people in ways that have never happened before.

Many of the letters we received are quite comprehensive in both the length and breadth of the comments. Our staff is currently working virtually around-the-clock to complete the analysis of the comments and to make preliminary determinations about changes we should recommend to the Secretary for the final regulations. Accompanying the final regulations will be a detailed analysis of the 4,600 comments received and the changes that have been made as a result of those comments. The perspectives of individuals and groups of parents, teachers, State and local officials, and individuals with disabilities are immensely valuable to us. I want to assure you that, as Members of Congress, your comments always carry great weight in our activities. We believe this will continue our bipartisan effort to ensure effective implementation of the statutory requirements of IDEA '97.

Of the input we have received, we received many comments on discipline, as well as other key areas of IDEA '97. In drafting language in the NPRM for the discipline procedures, we believe that what we have proposed is consistent with the wording of the statute and the legislative history. The language is designed to make sure that teachers and school administrators have the tools they need to make schools

safe and conducive to learning for all children in the district. However, a significant number of comments on the discipline provisions in the NPRM set out a range of viewpoints and suggestions, and we are taking them all very seriously in developing the final regulations.

We believe the discipline procedures will help make schools safer for all children, including children with disabilities. We also believe that when behavior is addressed early on through necessary interventions and supports, there will be a significant reduction in school failure and school dropouts, and a corresponding increase in meaningful school attendance and in the graduation rate of students with disabilities.

In closing, I want to mention that we are committed to publishing the final regulations as soon as possible this Spring, hopefully by Memorial Day. And we are doing everything humanly possible to (1) complete the analysis of the 4,500 comments; (2) develop recommendations for the final regulations based on that analysis; and (3) present the analysis and recommendations to the Secretary for his decisions.

IDEA '97 and its pending regulations have brought an important opportunity to support children with disabilities in meeting the same high standards of achievement as their classmates. With your help, the Act also helps us take advantage of that opportunity through coordinated national activities that will provide parents, teachers, administrators, and others with the research-based tools they need to improve results in the classroom. A key element of this effort will be the establishment of partnerships with associations and organizations to meet the needs of four audiences; families, local-level administrators; service providers; and policy makers. Each of these partnerships will address its membership's needs to understand the changes to the law and implications of these changes for their roles in improving results for children with disabilities. Other national activities will specifically target challenging areas. For example, we intend to fund special centers to address needs in the areas of dispute resolution and positive behavioral interventions and supports.

A large part of our goal here is to ensure that each teacher has the skills, knowledge, and supports he or she needs to confidently say for all children, "OK, class, it's time to begin."

Further, OSERS will support new institutes and centers to address particular requirements in IDEA '97. These investments, for example, include the Center on Dispute Resolution and Center on Positive Behavioral Interventions and Supports. And lastly, the Office of Special Education Programs will support an evaluation of the impact of the changes in IDEA '97 on practice and policy.

Chairman Goodling, Chairman Jeffords, and Members of the Committee, like you, we view this hearing as a continuation of the collaborative and bipartisan efforts that have characterized the passage of this legislation.

I will be pleased to answer any questions you may have. We look forward to working with you as we finalize the regulations.

PREPARED STATEMENT OF FRANK P. CLARK

Thank you Chairman Jeffords, Chairman Goodling, and members of both committees. I come here today from Mechanicsburg, Pennsylvania, where I am a constituent of Chairman Goodling. I am an attorney, and one of the concentration areas of my practice is in special education. I have litigated numerous special education cases on behalf of school districts throughout the greater Harrisburg area, in Adams, Cumberland, Perry and Dauphin Counties. But before my testimony is labeled that of an ideologue, be aware that I have also represented families in special education matters, even in the last year. Chairman Goodling told me several weeks ago that when Congress enacted the IDEA Amendments, which we call IDEA '97, one of the goals was to limit attorney involvement in special education. This is a laudable goal, with which I agree because I believe deeply that the worst thing to put between a school and a student is a lawyer. But I warn you that if you think these regulations will not increase the involvement of lawyers in the special education process, you are wrong. I come before you today to urge you that the IDEA regulations go beyond the implementation of IDEA '97, and will increase rather than decrease litigation. I ask that you direct the Department of Education to revise the regulations to conform to the IDEA '97.

My involvement in special education began in 1987, when a senior partner in my former law firm asked me if I might like to look at a special education matter for a school district client. This was shortly after the Handicapped Children's Protection Act amendments clarified a parent's right to receive counsel fees when prevailing in a special education matter. As I took on that assignment, and thought about the implications of this act, it was clear to me that special education cases would soon

proliferate. It is the obvious consequence when you take the inexact science of how to educate kids, add detailed procedural regulations, establish federally protected rights to a nebulously defined "free appropriate education," and enforce it through litigation. My predictions as a young lawyer were correct. Today we have a system that consumes schools in details, embroils them in litigation and detracts from their ability to do the day-to-day job of educating our children. Though the special education system involves less than 15% of the students, it consumes 25% of the school district budget and causes 75% of administrator headaches.

While IDEA '97 addresses some of the problems that exist in special education, the Department's proposed regulations, if promulgated, will undo some of the solutions and even create new problems. Considering the disparity of viewpoints between school and parent advocates, it would be unreasonable to expect IDEA '97 to resolve all concerns of either persuasion. Yet it appears here that the regulations largely attempt to take up work that the Department apparently felt was undone in IDEA '97, and does so without careful regard for the process of educating all kids. The regulations implement numerous interpretations of IDEA '97 that directly conflict with the act and its intent, and which will do great damage to the ability of schools to meet the needs of all students.

As a general observation, these regulations elevate form over substance and thereby take a substantial step to promote rather than prevent litigation. For those who doubt me, come to Pennsylvania. There, decisions are laden with awards of compensatory education for every procedural defect, no matter how slight, without real regard for its affect on a student's program. As a result, cases are laden with demands for compensatory education based on alleged procedural defects, no matter how slight. Furthermore, IDEA establishes a forum for parents to protest school compliance with IDEA procedures. Between the issues that arise in litigation and compliance complaints, the focus ignores the school's pedagogic response to a student and his learning style. Instead, undue emphasis is on the bureaucracy of documentation—notice to the parent, consent for an evaluation, documenting invitations to meetings, completing evaluation reports, writing IEPs, and documenting parent approval of assignments. Probably any school lawyer could tell you of a case where a student made significant academic progress but was ordered to a private school because an IEP was not filled out to the satisfaction of a hearing officer or administrative reviewer. If not, then that lawyer could tell you of an abusive student who is ordered to a less restrictive placement for the same reason. But beyond that, I foresee problems with the regulations for other reasons.

Suspensions

Section 300.121 of the proposed regulations adds a new twist to the suspension rule. It now proclaims that FAPE is denied for suspensions that cumulate more than 10 days. This is an expansion beyond the previous statutory limit of 10 days for a single offence, with a cumulative limit based on a case-by-case review. Pennsylvania has in fact legislated its own cumulative limit—15 days. This new per se rule of 10 days has no basis in the statute.

The determination of alternative placements provision of Section 300.522, together with 300.121, states that the placement must allow expelled and suspended children to participate in the general curriculum. This provision, however, should not be applied to "no-nexus" students, who may be lawfully subjected to school discipline.

Alternative Placements

Section 300.523, involving 45-day placements, does not implement the intent of Congress. The 45-day placement was clearly intended by Congress to provide a cooling-down placement when a school and parent cannot agree on a setting for a student who puts others in danger with weapons, drugs or other conduct. The regulation, however, guts the effectiveness of such placements in at least three ways: it unreasonably interprets the 45 days as calendar rather than school days, it creates a definition of "substantial evidence" that imposes a far greater burden on schools than originally intended, and, worst of all, it applies the "manifest determination" rules in such a way as to make the 45-day placement a nullity.

The 45-day placement was intended to bypass the delays of due process for students engaged in behaviors placing others at risk. The student who brings a weapon, or controlled substance to school, or who is otherwise creating a risk of harm to himself or others, often needs an emergency placement. After the Supreme Court decision in *Honig v. Doe*, a school usually had one option: suspend the student and negotiate an interim placement with his parent. If negotiations failed, then the school had to go to court for injunctive relief—a process involving cost, delay, and no assurance that the relief could be granted before the suspension expired and the

student returned to school. IDEA '97 added flexibility, giving the school a limited right to make emergency placements in the above situations, for not more than 45 days. It is a generous balance between the objecting family's right to due process prior to a permanent change in placement, and the school's substantial interest in ensuring the safety and welfare of all students and staff. The thinking surely must have been that 45 days should allow the parties to complete due process, resolve their placement dispute, and allow the child to cool down before returning to his placement.

Although IDEA '97 does not define these 45 days as calendar days, the regulation does, and thereby undoes much of the benefit to be gained from such placements. One would safely assume that where a 45-day placement is necessary, there is an underlying due process dispute. Congressional and regulatory intent notwithstanding, due process cannot be completed in 45 calendar days. This is not the fault of lawyers, or schools, or parents. It is the simple fact that any litigation process cannot operate like a drag race, where the parties get set, go, and the event is over seconds later. These cases are profoundly fact-intensive, and one or both parties are likely to pore over lengthy documents that review two or more years of a child's history. The due process case that could be resolved in 45 school days would itself be rare.

If 45-day placements are limited to calendar days, and if a due process case takes place while the 45 days run, then it is a near certainty that the school will be requesting a hearing officer to consider extending the 45-day placement. Such a request would nearly always take place while the other proceedings are pending. Considering that an expedited request for hearing must be decided within 10 business days of the request, the school must make a demand for an expedited hearing to extend the 45 day placement, and must make that request within the first 30 calendar days of the placement. This is counterproductive in two ways. First, this takes time away from the parties that would otherwise be used to present testimony regarding the bigger issue in dispute. The last two weeks of the student's emergency placement will instead be used to determine whether the alternative placement should continue. The parties therefore delay addressing the bigger issue of what programming and placement the student needs to control such behavior in the future. Second, conducting an "extension" hearing based on evidence developed in the first 30 or so calendar days of an alternative placement would not allow for a realistic assessment of its effectiveness. One could reasonably expect, for instance, that an emotionally disturbed child who opposes (or whose parent opposes) an alternative placement would initially react unfavorably to the alternative placement. Yet, if the placement were reviewed after 30 calendar days, the review would likely reveal that the student has an oppositional attitude toward the alternative placement. The likely result is an inconsistency that special educators know only too well: the student should return to the prior placement because he is now worse off, even though he was a threat in the placement where he now returns.

Another problem in this section is its definition of "substantial evidence." IDEA '97 let this go undefined. Undeterred, the Department finished the job in a stunning way, and upset much of the balance of burdens that Congress clearly intended with the 45-day placement. Congress intended for the 45-day placement to provide a short-term placement for troubled kids who by history or threat were likely to cause harm.

The Department employed a definition that most lawyers would find not in accord with the term "substantial evidence." In Pennsylvania, any lawyer familiar with the administrative process could define our courts' definition of substantial evidence practically by heart: "evidence that a reasonable mind would believe is sufficient to support a conclusion." A preponderance of the evidence is something more than that. Imagine a scale, with both sides equally balanced with evidence—that is substantial evidence. One side outweighing the other is a preponderance of the evidence.

In the context of such an expedited 45-day hearing, the "preponderance standard" would assure that the process is unworkable. Under the preponderance standard, if the parties' witnesses are equally credible, the 45-day placement cannot be made. Thus, the hearing officer's decision would be required to include detailed findings on credibility, to support a decision that the school had presented a preponderance. Of course, in a two-tier system such as Pennsylvania, we have a peculiarly compounding problem: our second tier appellate panels have historically gone out of their way to dispense their own brand of educational justice, even when that means making credibility-based findings of fact of witnesses they never observed. A preponderance standard in our two-tier system would guarantee that these cases have almost no predictable outcomes.

My greatest dispute with Section 300.325, however, is the explanatory Note, which merely explains away the process almost from the beginning. I know that

leaders of the majority of both committees have expressed opposition to the explanatory notes in the regulation. Let me explain one absurd result from this Note that someone will exploit. When a school conducts a manifest determination meeting and concludes there is no nexus, IDEA and the regulations make clear that the school can discipline the student as if he/she were not a student with a disability. Thus, the school could place such students on an alternative placement, for 45 days or even longer. This is not a concern, though I must add that such a result could probably never occur if it involves the emotionally disturbed population, the students who are most likely to create the discipline problem in school in the first place; I cannot imagine a scenario in which such a student's behavior would be without a nexus.

But the nullity is with the students who are determined to have a nexus between their disability and their behavior. The Notes to Section 300.523 suggest that if the school concludes there is a nexus, then it should immediately return the student to the former placement, even if the student is on a 45-day alternative placement. If that were so, the 45-day provision would never be used. For the "no-nexus" student, there would be no 45-day limit, only the limitations of the school's disciplinary code. Yet according to the Department, for a "nexus" student, the 45-day alternative placement is now limited to 45 days, or the determination of the nexus, whichever comes first. As I suggested before, it is nearly impossible to imagine an emotionally disturbed student engaging in behavior that could be regarded as "no-nexus" conduct. The 45-day placements were intended for this population, yet the regulations have slashed that time frame down to nearly nothing. This is not what Congress intended, and it should be removed from the final regulation.

Compensatory Education

Section 300.660 of the regulations seized upon an award of Compensatory Education as an appropriate state response to a problem. I disagree heartily that compensatory education has a basis in the Act as a state-mandated award. I remember when the concept was developed in light of the Burlington case. Back then, compensatory education was awarded for egregious behavior. Even only three years ago, the Third Circuit (where I come from) ruled that whatever its threshold level, compensatory education is appropriate in cases where the loss of education is substantial. From my view, special education adjudicators (mostly administrative reviewers rather than hearing officers) have since seized upon compensatory education as a stealth remedy—there are no standards for when it is required, there is no measure of what it is to remedy, and reviewers dispense without accountability. In Pennsylvania, appellate reviewers openly declare it to be within their "equitable" powers and simply award it, much as if they were some super chancellor in the King's Court. As an example, I had a case recently involving an aggressive and assaultive ED student whom the parent simply wanted to be returned to a regular classroom from a special education center. Comp ed was never one of the parent's demands. Instead, the Panel pronounced its wisdom without request or prodding from the parent, and concluded that the student had to be placed in the Least Restrictive Environment, together with a gift of additional services to the student. The irony here is that when the district sought quotes from service providers to implement the award, one provider concluded that the level of services were incompatible with a regular class setting; it advised the district that such services would be appropriate only to a student who required a restrictive setting. Thus, if the panel was intending to compensate a failure to provide the least restrictive setting, its award unwittingly confirmed the district's position—that the student needed a more restrictive setting.

Of course, there may be cases where students are truly deprived and there should be some correction. Yet at the time Burlington was decided, compensatory education was like punitive damages—if the school made a substantial error, it was likely to be assessed. Today, it's more like a PEZ dispenser—pop open a special education case and some comes out. The language in Section 300.660 will only further such thinking. A regulatory invitation to dispense awards with no substantive standard for an award will further corrupt the standard by which the appropriateness of education is based. In my opinion, such an award should only be a judicial pronouncement, and at that awarded only judiciously.

It is especially unfortunate that the term "Free Appropriate Public Education" (FAPE), especially as it is applied to the procedural protections of IDEA, invites second-guessing of schools. My interpretation—that schools have an obligation to gather available facts about a student and make a reasonable educational response to the problem—is widely shared in at least the First and Third Circuits. That view is challenged every day by those who expect our schools to ensure that every student with a disability makes a prescribed gain. But schools cannot be expected to

cure a learning disability or turn a behaviorally challenged student to an Eagle scout. They are required to investigate the disability, and make a reasonable attempt to address the disability. Doctors might be asked to cure an illness or injury, but they can't be expected to do that. After doing these cases for ten years, too many professionals in the adjudication business hold schools to an unreasonable standard. I have seen decisions where kids with LD, who by definition are going to read at a slower pace than their peers, are held to be denied FAPE because they continue to read at a slower pace than their peers after several years of special education. I have seen decisions where behaviorally challenged ED kids are found to be denied FAPE because itinerant services, behavior management, then full-time aides were unable to stop the student from engaging in more chronic or severe behavior.

Stay Put

Section 300.514(c) is an inventive interpretation of the Stay-Put rule, the provision of IDEA that prohibits schools from changing a student's placement while a dispute is pending. The IDEA provides that a student's placement may not be changed during the pendency of an administrative or judicial proceeding. Simple enough, but the regulations now add a one-sided provision allowing special dispensation when parents prevail either at the hearing level or administrative level. These regulations now interpret that as an "agreement by the state." This regulation, of course, has no basis in the IDEA. It is ignorant, of course, of the possibility that when a hearing officer rules in favor of the parent in a two-tier system, there is still an opportunity for appellate review to reverse. It seemingly implements what the Supreme Court referred to in its Burlington decision as the "estoppel" argument. In Burlington, the Supreme Court expressly refused to adopt that position. This is perhaps the most egregious example of legislating in these regulations. It also risks serious damage to the concept of FAPE. If this goes into effect, schools will be obligated to fund placements that are still the subject of judicial, even administrative, review. Should the decision be reversed on administrative or judicial review, then we have the absurd situation where a school is now compelled to pay for an inappropriate placement. If this proposed regulation is approved, I recommend that we call this the FIPE amendment, for Free Inappropriate Public Education.

Attorneys Fees

Section 300.513 pertains to attorneys fees. While its language accurately quotes the provisions of IDEA '97, it also leaves out the substantial and important new language of IDEA '97 that limits attorneys from recovering fees in several situations. Considering that the overwhelming majority of the regulations essentially parrot IDEA '97, it is somewhat mysterious why the regulations are mute on this obvious change in the new law.

Independent Evaluations

Section 300.502(e)(2) pertains to independent educational evaluations. This includes a new requirement that a school may not impose conditions or timelines for an educational evaluation. This is an improper addition, particularly in light of the new authorization in IDEA '97 that gives a parent a new right to withhold authorization for reevaluations. I have already seen a dramatic increase this year in the number of parents who refuse to consent to evaluations, even while they request an independent evaluation at public expense. If the purpose of the evaluation is to conduct a complete review of the student's functioning level, it is curious why this regulation should institutionalize stonewalling.

Meetings

Section 300.501 defines meeting as any "prearranged event in which public agency personnel come together at the same time and place to discuss any matter relating to" Section 300.501(a)(2). This would include almost any discussion, even casual staff conversations involving a student. It has no basis in the statute.

Homebound Instruction

Section 300.551 includes the gratuitous statement in a Note that "home instruction is usually appropriate for only a limited number of children, such as children who are medically fragile and are not able to participate in a school setting with other children." This language, however, has no basis in the statute. While home instruction, or homebound instruction as we call it in Pennsylvania, may be used sparingly, such comments have the ulterior effect of becoming the limits on its use. The language should be left out, and the use of homebound should be governed on a case-by-case basis.

Complaint Procedure

Sections 300.660-300.662 perpetuate an improper indulgence in favor of non-parents and non-guardians who meddle in special education matters. IDEA '97, like its predecessor, requires states to maintain a complaint procedure to address complaints from parents and guardians regarding the provision of special education to their children. IDEA '97 does not require that this apply to non-parents. For those who say to this, "So what," in my region, one outside agitator has taken to this process to make carial complaints against schools for whom he holds great enmity. Let me make this clear-he anoints himself the ombudsman for districts where he doesn't reside, and does this for kids not his own. He simply writes or picks up his phone and contacts the Pennsylvania Department of Education Bureau of Special Education ("PDE") with "complaints." He finds this procedure to be like spitballs he rolls up for PDE to shoot. The crazy thing is that PDE lets this go on. Just this year, he phoned PDE on a Tuesday to file one of his complaints against one of my clients, and promised the state reviewer he spoke to that he would file another complaint against that school every day that week. Say what you might as to his barratry (his complaints were unfounded), by Friday he at least had proved honest as to his intent.

Just last week, I met with a client district being audited by a PDE bureaucrat investigating yet another of this outsider's "complaints." After a two-hour meeting involving the superintendent, principal, guidance counselor, case manager, and lawyers, the investigator found no basis for corrective action. This agitator might think he's helping kids. In fact, he just cost every student in the district the reasonable educational use of staff time, not to mention the funds that could have been applied to necessities too obvious to mention had they not been expended on professionals. Now, I am not such an ideologue to suggest that there is no need for oversight of IEPs. The state should be empowered to investigate compliance, and there should be some tolerance for unfounded, maybe even frivolous complaints from parents and guardians. Yet this process is difficult enough dealing with frivolous complaints from parents. Why open this process up to a mean-spirited free-for-all against a school? These regulations should make a clear statement that the process is to be initiated by parents or guardians only.

Conclusion

A solicitor-acquaintance told me last month of one of his cases where a mother demanded an IEP review out of spite for the district completely unrelated to her son's program. Her son's IEP had just been revised and went into effect on the same school day that the mother came into the school to advocate in an IEP meeting for another student. This second student's IEP conference was held at 10:30 a.m., and when this meeting went sour, the mother-advocate demanded an IEP review for her own son's IEP-despite the fact that it was only two hours old.

There is improper emphasis on litigation to resolve these matters. A parent takes a complaint to an attorney, the attorney sees the attorney fee provision, they lay groundwork for complaint, then make the complaint. The school sees the complaint and forwards it to their solicitor, and in about a month the parties are in a hearing, contesting issues that may never have been discussed in IEP or MDE meetings. Everyone appreciates the need to move quickly on kids' programs, but this process rewards contentiousness. Some parents openly brag that they will cost the district thousands in the fight. Whenever I tell district clients at the beginning of a matter about IDEA's attorney fee provisions, I'm asked what the district gets if it prevails. The answer shocks them every time.

The parent-school relationship goes a long way toward affecting a kid's feelings about school. There is no better way to poison that relationship than dangle the litigation sword out there for parents to extort their wishes from the district. New changes in IDEA will help, in that eventually some parents might better craft their complaints to refine issues before they get to a hearing and maybe more will mediate rather than litigate. But the bigger problem is that litigation is a mighty sword that the Act places squarely in the parents' hands with the instruction to go get the district. Congress should impose mandatory dispute resolution, lengthen the time frame from complaint to hearing to enable dispute resolution to work, eliminate the two-step review proceedings with direct appeal, to court from hearing officer, and make clearer standards for awarding and denying attorney's fees. These would reduce the emphasis on litigation, level the playing field, and not unduly slow down the process.

STATEMENT OF THE NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL
EDUCATION, INC.

The National Association of State Directors of Special Education (NASDSE), representing the State administrators of education programs for children and youth with disabilities in the 50 States and federal jurisdictions, believes that certain critical changes are needed in the proposed IDEA regulations in order for States to appropriately implement the Act.

1. Use of Notes: NASDSE is concerned about the extensive use of notes in the proposed regulations. In the past, notes have been cited in court cases, affording to them the same weight as the regulations. Administrators need clear guidance in implementing the law, and parents need clear language in order to understand their rights. The use of notes confuses, rather than clarifies, the issue.

NASDSE strongly supports eliminating all notes, incorporating only those which further clarify the statutory language into the body of the regulations themselves. Those which suggest "best practice" should be disseminated by the Department of Education through technical assistance documents.

2. Discipline Provisions: While NASDSE believes that the statutory language regarding discipline is quite limiting, we do not believe that the Department of Education has gone far enough to clarify the statutory language in the proposed regulations. NASDSE suggests that the following areas be clarified:

Status of the student after he or she has been removed for the maximum 10 days in a school year;

Whether or not a full due process hearing is required when a hearing officer removes students who are a danger to themselves or others to an interim alternative educational setting; and

Narrowing the definition of "knowledge" regarding students who are not yet deemed eligible for special education and related services.

NASDSE is also concerned about the increased paperwork burdens imposed by the statute. Generally, greater documentation is required. For example, the number of instances requiring parent notice have increased, including phone logs to document attempts to reach parents. New data requirements (adding race/ethnicity to data collections; requiring information on suspensions and expulsions) are stretching time and resources of State staff. The discipline provisions, also, have many new requirements, including functional behavioral assessment, development of behavior management plans for a broader array of students, and greater staff demands generally. The proposed regulations should do as much as possible to relieve these burdens, and certainly should not add more requirements to those already included in the statute.

Attached to this testimony are the comments submitted to the Department of Education by NASDSE on the proposed regulations. NASDSE is a strong proponent of including children and youth with disabilities in overall school reform. We believe the 1997 IDEA Amendments go far in promoting this goal. Having accompanying regulations which clarify and interpret the statute, rather than adding new requirements that go beyond the statute, will make enable State and local education agencies to achieve the goal of education reform for all students.

[Additional material may be found in committee files.]

PREPARED STATEMENT OF BRIAN A. McNULTY

Members of House and Senate, I am pleased to be before you today to comment on the Proposed Regulations for the implementation of the Amendments of 1997 to the Individuals with Disabilities Education Act (IDEA). I am Brian A. McNulty, Ph.D., the Assistant Commissioner of Education for the Colorado Department of Education. Before becoming the Assistant Commissioner, I was the State Director of Special Education in Colorado for seven years. In my current capacity, I oversee special education as well as a variety of other programs and services for typical students. Before responding to the Proposed Regulations, I would like to provide you with some information regarding our state.

Services to Children with Disabilities in Colorado

In 1993, Colorado passed legislation to require the adoption of academic content standards and corresponding assessments. Over the past several years, standards have been adopted by school districts, and last year we administered our first statewide assessments. The second round of statewide assessments are just taking place this month. While we still have a long way to go, Colorado is on the road to raising expectations for higher performance for all of its students. As a part of this process, the data from the assessments is disaggregated by gender, ethnicity, and disability. This will provide information to ensure that needs are identified, and that performance increases are for all students. A Bill is before the legislature this session to tie district and building accreditation to increases in performance. Colorado is committed to achieving higher standards for all students.

While increasing in number, students with disabilities still only represent about 10.6% of all students served in Colorado. This percentage places Colorado as one of the lowest states in its identification of students with disabilities (48th out of the 50 States). We believe that this is due, in part, to a primary focus on the prevention of learning difficulties. We believe that prevention and early intervention is significantly more effective than later intervention. Colorado also prides itself on the way it serves its students. Over 70% of all students with disabilities are served within the general education classroom. This is important, because if we truly expect all students to meet higher standards, then we must ensure that they have access to higher expectations, higher standards, and a richer curriculum.

Reauthorization of IDEA

In the Spring of 1995, I was asked to testify before the Senate Subcommittee on Disability Policy on the reauthorization of IDEA. Since that time, the Congress has reauthorized the IDEA, and I want to report back to you today that I am extremely pleased with the changes that were made. The Congress rightfully recognized that "the implementation of this Act has been impeded by low expectations." They went on to say that "the education of children with disabilities can be made more effective by... having high expectations for such children and ensuring their access in the general curriculum... strengthening the role of parents... coordinating the Act with other... school improvement efforts... providing ... supports in the regular classroom... [and] providing incentives for whole-school approaches."

While still not approaching the funding levels identified in the original Act, I would be remiss if I did not express my gratitude to the members of this Committee for their leadership in achieving the funding level increases seen over the past two years. These increases have allowed students to be a part of the reform efforts, and not apart from it. Implementing a broader range of instructional strategies will benefit not only students with disabilities, but all of Colorado's diverse learners. I also applaud the change that will go into effect moving the funding to a census-based formula. This benefit states like Colorado who do a good job in prevention, and does not reward states who over-identify such students.

Of all of the changes in IDEA, however, I am most supportive of those which focus on setting higher expectations and higher accountability for students with disabilities. For too long, we have been willing to set, and accept, low expectations for these students. The alignment of IDEA behind standards and assessments will support states and school districts in their accountability efforts. Tying the Individualized Education Program (IEP) to the child's progress in meeting the general education curriculum goals is a critical step in this goal. IEPs never achieved their intended purpose, because they were separate from the general education curriculum. These changes will move towards correcting that problem. The addition of language around performance goals and indicators will also help.

The movement of both the Improving America's School Act (IASA) and IDEA to "whole-school" models of intervention are of great importance. I believe that much of what we have learned about meeting the needs of diverse learners is tied to "school-wide" planning and intervention. Allowing students with disabilities under IDEA to participate and benefit from these schoolwide models is good for them and their schools. In these schools, there is a shared responsibility for the success of all of the children. Another change in IDEA allows "incidental benefit" to non-disabled students by special education personnel. This is a more effective use of resources and skills.

Comments on the Regulations for IDEA

I have been asked today to comment on specific provisions of the Proposed Regulations, and, therefore, will limit my recommendations to that specific area. However, before listing my comments on the Regulations, I would like to make one observation on the efforts of the Office of Special Education and Rehabilitative Services/Office of Special Education Programs (OSERS/OSEP) since the reauthorization. While not always an advocate of the U.S. Department of Education (USDOE), I have to express my extreme satisfaction with how they have expeditied the rule-making process and with the degree of technical assistance they have provided to the states. While, in the past, we have come to expect the rule-making process to take a considerable amount of time before the draft regulations would be issued, that was not the case this time. The draft Regulations were issued in a very timely manner. This was very helpful for everyone involved. In addition to this effort, the director of OSEP and staff came to our state and conducted a public hearing on the Proposed Regulations, and met with numerous individuals and groups to gather feedback. In all my years of work in this field, I have never seen such responsiveness from OSEP. It is my understanding that this same process was done nationwide. Given the limited staff and resources of OSEP, this was a remarkable effort. Based on this experience, I would expect OSEP to be conscientious in their review of the comments that the State of Colorado and others have filed on the Proposed Regulations. I would hope and expect that the final Regulations will reflect all of the input received.

Having been involved in the education of children with disabilities since the inception of P.L. 94-142, now IDEA, I can tell you that these Regulations will be relied on frequently by teachers and administrators. My original copy of the Regulations for P.L. 94-142 looks like a well-worn and underlined textbook. It is something I went to often for clarification, guidance, and support. It is important to remember that those of us responsible for meeting the educational needs of children with disabilities will use these Regulations as our guidebook for decision-making. The Regulations are what we use to implement the Statute. More often than not, practitioners will go to only the Regulations and not to the Statute. Therefore, it is important that they address the right issues, and maintain a balance between giving enough clarification and guidance, and not overregulating. By and large, these Proposed Regulations maintain that delicate balance. While there are areas which could benefit by either further clarification or reduced guidance, I would hope that the results of this hearing would be to generally support the Proposed Regulations. I believe that OSEP has made a genuine effort to weigh the needs of children with disabilities with the needs of school districts. They have attempted to take both the letter and the spirit of the new IDEA and put these into the Regulations. These Regulations will assist us in our state and support many of our current practices.

Recommendation on the Proposed Regulations

What follows here are a number of comments on specific issues that I have been asked to address. I have tried to be clear but brief in my responses, but would welcome the opportunity to clarify any of my comments.

Discipline

Let me begin by saying that the Congress did a masterful job of achieving the right balance on the difficult issue of discipline. During the reauthorization, there was no issue that was more contentious. All of the parties are concerned that schools be both orderly and safe for all students. The issue of discipline is particularly difficult when it comes to children with disabilities, however. Questions related to intent, knowledge, and appropriate services all enter into the debate. There are concerns about the issue of the "ten day" Rule in the Proposed Regulations. While the Statute does cite the use of a ten day suspension or alternative placement, the question of what happens during and after the ten days are not addressed in the Statute. Let me say here that, in Colorado, we have used the ten day Rule for as long as I can remember with minimal problems. We have always interpreted the ten days to mean "ten days during any school year," and that services must be provided immediately following the ten days.

School districts in Colorado have always been very judicious in how they use suspensions, and have always provided services following the ten day limit. Almost always, these suspensions occur over the course of the school year, which provides schools with ample opportunity to hold an IEP meeting anytime during that year. If a child with a disability is suspended and continues to exhibit behaviors which warrant subsequent suspensions, it only seems reasonable to bring the family and the school together to hold an IEP review meeting to examine the services or the placement of the child. Districts do not need to wait until they are at the ten day limit to take action, and probably should not wait that long to act.

It is my belief that a lot of this squabbling over whether ten days means ten days at a time, or ten days over a school year, is misplaced. Schools need to be focusing their time and energy on figuring out how not to suspend a child with a disability in the first place. Suspensions should be one of the last resorts. Instead, we as educators need to be concerned with identifying and using effective practices. The regulations provide a boundary line which is easily understood by schools and families. The Proposed Regulations are clear and reasonable in this area.

Knowledge of a Disability

The question of whether an LEA "had knowledge of disability" is described in the Proposed Regulations. Four examples are provided, to clarify what would constitute such "knowledge." Two of the examples, however, could benefit from further clarification. The first is, "The behavior or performance of the child demonstrates the need for these services." In this example, it is unclear as to whom the behavior appears or is demonstrated to. This would be very open to interpretation after the fact, unless the behavior has been documented in writing somewhere. It may be more appropriate to include this with the first example, which requires that the concerns be expressed in writing, or to list examples of how behaviors might be documented, e.g. discipline referrals or school counselor referrals.

The second clarification concerns the example of the teacher or other personnel expressing concern to the director of special education or *other personnel of the agency*. "Other personnel of the agency" is too nebulous. Does this include a comment made between two teachers, or some other staff? This example would be more helpful if the concerns were expressed to the special education director, the principal of the building, or the school counselor, and the concerns were expressed in writing. This would not need to be a formal referral to special education, but rather just a written concern. This would provide both documentation and clarity as to who to report it to.

Manifest Determination and Behavior Plans

The regulations as they relate to "manifest determination" seem clear, appropriate, and consistent with the Statute. While a similar process has been used by school districts for a number of years, the Proposed Regulations help to clarify the "conduct of the review." Listing the considerations provides a framework and a process which will assist school districts in this determination. However, the Regulations do not address the issue of disciplinary action if the manifest determination hearing determines that the behavior is related to the disability. There are a number of different references to the "functional behavioral assessment," "behavioral plan," "behavioral intervention strategies," and "positive behavioral strategies." Given these many references, there may be some benefit to providing some definitions to those many terms. It would also be helpful to connect the sections which contain those references, and build put them into the IEP section.

Colorado currently has a State statutory requirement for a behavior plan for all students "at -risk" of suspension or expulsion, so the Statutory and Proposed Regulatory requirements blend nicely for us.

Expedited Due Process

Under the Proposed Regulations, the expedited due process hearing is to be completed within 10 business days. The question is whether this would affect the timely compilation and consideration of the facts. Considering that the usual timeline for a hearing is only 45 days in Colorado, it seems as if the 10 day timeline is reasonable for an "expedited" hearing. The timeline, however, can be extended if the parties all agree. It seems that since most expulsion hearings happen within a ten day timeframe, and that the expedited hearing would consider similar information, that ten days is appropriate. Given that suspensions or alternate placements can only be for 10 days (or 45 days for weapons or drugs), this expedited 10 day time frame fits with that timeline. It is also worthy to note that the timeline can be extended if both parties agree and this would allow for more time for consideration of the facts.

General Education Curriculum

The requirement for "access to the general education curriculum" in any alternative setting is required by the statute, and the definition in the Note to the Regulations clarifies that the term relates to the content of the curriculum. As more states move towards adopting State and Local content standards with the expectations that ALL students meet them, it is critical that all students have access to that curriculum.

It is important to understand that this does not require that all services typically offered in a regular school would be provided, but rather that the child have access to the general education curriculum. This regulation in no way requires nor establishes a national curriculum.

Stay-Put Provision

It appears that the "stay put" provisions are changed by Section 300.514(c), in that the child's current placement may be changed by the hearing officer. Since the hearing officer can now order such a change as a part of their final decision, however, it is difficult to speculate on the significance of this change. This clarification does clear up a current problem; when the hearing officer finds in favor of the family, the child could be moved to a new placement and not have to wait until the appeal is complete.

Parental Consent in Evaluation and Reevaluation

I am not the foremost expert in the area of "consent," and since you have parent representation on this panel, you may want to address your questions to them on this issue. To me, however, it seems that there is sufficient guidance in the Proposed Regulations as to this issue. However, the issue of reevaluation is less clear. The Statute requires that "each local education agency shall obtain informed parental consent... prior to conducting any reevaluation," but goes on to say that if the IEP team determines that no additional data are needed, they need only notify the parent, and are not required to conduct an assessment, unless requested by the parent. The Proposed Regulations attempt to reconcile the Statute by saying that there is not a requirement for parental consent in reevaluation, except when conducting any new tests as a part of that reevaluations. This clarification is helpful.

Participation of the Regular Education Teacher

The participation of the regular education teacher "to the extent appropriate" is identified in the Statute. Colorado Rules have required the participation of the general education teacher or counselor in the IEP meeting for a number of years. This has proven to be particularly beneficial in identifying modifications and accommodations in curriculum, instruction, and assessment as we move towards a standard-based system.

Graduation

Does graduation constitute a change in placement? Under Colorado Regulations, we consider graduation to be a change in placement which would trigger the need for an IEP review meeting, parental consent, and a reevaluation. This has been, and continues to be, our practice, so the Proposed Regulations would support what we currently do. We believe that there is case law which supports this position. If one considers that graduation results in a termination of all services, it would be hard not to consider this a change in placement.

Extended School Year

The requirement to serve children who turn three years of age during the summer, by having automatic consideration for extended school year, does not appear in the statute, nor in the Proposed Regulations. While it has been the position of OSEP that the obligation to provide services begins no later than the child's third birthday, this has not meant that a child would automatically receive extended school year services. The Proposed Regulations state that the need for extended school year "must be made on an individual basis," and the Note says that "nothing in this part requires that every child with a disability is entitled to, or must receive, extended school year services." The Proposed Regulations do not require that all children who turn three during the summer be eligible for extended school, just that they receive the same consideration for such services as all children with disabilities.

Hearing Officers

The authorization of hearing officers to award attorneys' fees is not addressed in the statute. However, the Proposed Regulations state that "there is nothing in this part that prohibits a State from enacting a law that permits hearing officers to award attorneys' fees;" it does not require states to adopt this practice.

BEST COPY AVAILABLE

Conclusions

The Congress and the USDOE have important roles to play in the education of children with disabilities. Families and educational agencies look towards them for leadership and support, as well as for rights and protections for students with disabilities. Twenty-five years ago, it was not uncommon for students with disabilities to be denied access to education. While the access of most students with disabilities has been improved, the educational outcomes of such students still leave much to be desired. Too many students with disabilities are still dropping out of school, and the ones who remain are not achieving at the levels that they are capable of. According to national data, only 44% of students with disabilities graduate with a diploma. Conversely, over 40% of students with disabilities either drop out of school, or cannot be found. We must not accept these results.

The partnership and shared responsibility between the local, state and federal levels has resulted in real progress towards the goal of providing a "free appropriate public education" for all children with disabilities. The IDEA has been, and remains, a powerfully effective piece of legislation. Now, we must focus our efforts on ensuring that all children have access to a rich curriculum, effective instruction, and the supports they need to achieve high standards.

Overall, the Proposed Regulations are clear and consistent with the Statutory changes made by the Congress. States and districts can use these Regulations, and they will be helpful in implementing the Statute. The changes to IDEA and the implementing Regulations will move us forward in achieving higher standards for all students. We look forward to working with you on this most important endeavor.

(Attached are the figures requested regarding the federal program monies coming to the Colorado Department of Education, much of which are flow-through funds for the districts.)

BEST COPY AVAILABLE

COLORADO DEPARTMENT OF EDUCATION

Adult Education - State Administered Program	2,358,945
Bilingual Title VII	115,000
Emergency Immigrant Education Assistance	700,000
Improving America's Schools Act - Title I	89,815,572
Migrant Education	3,238,381
Improving America's Schools Act - Title VI	3,837,807
Goals 2000	5,862,205
Deaf Blind Child Centers/Services	158,386
Individuals with Disabilities Education Act, Part B	47,716,756
Training Personnel for Handicapped Education	114,000
Individuals with Disabilities Education Act, Preschool	4,888,873
Individuals with Disabilities Education Act, Infant/Toddler	4,414,225
Systems Change/Severe Needs	285,411
Drug-Free Schools and Communities	5,080,116
Byrd Scholarship Program	381,830
Library Services and Technology Act	1,881,889
Strengthen Math & Science - State Grants (Title II)	3,007,230
Foreign Language Assistance	28,000
Educate Homeless Children	235,184
National Commission on Community Service	408,782
Even Start Family Literacy	948,838
Aids Prevention	543,523
U.S.D.A. - Food and Nutrition Service	61,459,312
National Coop. Education Statistical System	20,000
Data Comparability	4,630
Christa McAuliffe	32,823
Colorado CONNECT	2,500,000
Title III, Technology	3,656,542
Charter Schools	4,300,000
TOTAL FEDERAL FUNDS	
FROM U.S. DEPARTMENT OF EDUCATION	227,800,417

[Whereupon, at 2:12 p.m., the joint committee hearing was adjourned.]

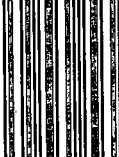
○

BEST COPY AVAILABLE

ISBN 0-16-057301-7



90000



9 780160 573019



U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)



NOTICE

REPRODUCTION BASIS



This document is covered by a signed "Reproduction Release (Blanket) form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.



This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").