98-636 A
Updated August 13, 1998

Individuals with Disabilities Education Act: Proposed Amendment Regarding Interim Alternative Educational Placements

(name redacted)
Legislative Attorney
American Law Division

Summary

An amendment to the interim alternative educational placement provision of the Individuals with Disabilities Education Act (IDEA) has been proposed by Representative Livingston, added to the Department of Education appropriations bill, H.R. 4274, 105th Cong., 2d Sess., and reported out of the House Appropriations Committee on July 20, 1998. The amendment would change the current law by eliminating the current limitation of 45 days for an interim alternative educational placement. In addition, the amendment would add a new subsection allowing schools to place a child with a disability in an interim alternative educational placement if the child intentionally exhibits violent behavior that has resulted or could have resulted in physical injury to the child or others while at school or a school function. For a more detailed discussion of the existing disciplinary provisions in IDEA see Jones, "Individuals with Disabilities Education Act: Discipline Provisions in P.L. 105-17," CRS Report 98-42 (January 12, 1998). This report will be amended to reflect subsequent legislative action.

Current Law

Under current law, a child with a disability is not immune from disciplinary procedures but neither are those procedures identical to those for children without disabilities. IDEA contains detailed due process protections for children with disabilities including the "stay-put" provision requiring that unless the state or local educational agency and the parents otherwise agree, the child shall remain in the then current educational placement of the child during any dispute over the child's education.[1] If a parent feels that a child with a disability is not receiving a free appropriate public education, a parent may invoke due process and ask for a hearing on the issue.

[1] 20 U.S.C. §1415(j).

These provisions were included in IDEA due to congressional findings that children with disabilities were often not receiving an education or were receiving an inappropriate education. The House and Senate Reports for P.L. 94-142 both noted statistics indicating that there were more than eight million children with disabilities and that "only 3.9 million such children are receiving an appropriate education, 1.7 million handicapped children are receiving no educational services at all, and 2.5 million handicapped children are receiving an inappropriate education."[2] In addition, at the time of enactment of P.L. 94-142 there were a number of judicial decisions finding constitutional infirmities with the lack of education for children with disabilities when the states were providing education for children without disabilities.[3] In fact, one of these decisions, *Mills v. Board of Education*, involved seven school age children who had been excluded from the public schools and had been labeled as behavior problems, mentally retarded, emotionally disturbed, or hyperactive and received no education. The district court found that this denial of an education was a denial of constitutional due process.

IDEA's due process protections against a school unilaterally ceasing services to a child with a disability do not mean that school officials have no options regarding disciplining such children. Currently, school personnel may

- suspend a child with a disability for up to ten days,
- place a child with a disability in an interim alternative educational setting for up to forty five days for situations involving weapons and drugs,
- ask a hearing officer to order a child to be placed in an interim alternative educational setting for up to forty five days if it is demonstrated that the child is substantially likely to injure himself or others in his current placement,
- conduct a manifestation determination review to determine whether there is a link between the child's disability and the misbehavior. If the child's behavior is not a manifestation of a disability, long term disciplinary action such as long term suspension or expulsion may occur, except that educational services may not cease.

Although the IDEA amendments of 1997 did provide more flexibility for the schools in dealing with children with disabilities who commit acts subject to discipline, some school officials have argued that the amendments did not go far enough.[4] This has given rise to a proposal to amend IDEA in addition to the Livingston amendment. Senators Gorton and Faircloth proposed an amendment to H.R. 2646, a bill to amend the Internal Revenue Code to allow tax-free expenditures from education individual retirement

---

[2] H.Rep.No. 332 94th Cong., 1st Sess. 11 (1975); S. Rep.No. 168, 94th Cong., 1st Sess. 8, *reprinted in* U.S. Code Cong. & Ad. News 1425, 1432 (1975).

[3] *PARC v. State of Pennsylvania,* 343 F.Supp. 279 (E.D. Pa. 1972); *Mills v. Board of Education of the District of Columbia,* 348 F.Supp. 866 (D.D.C. 1972). The House Report for P.L. 94-142 indicated that following these decisions there were "46 cases which are completed or still pending in 28 States." H.Rep. No. 332, 94th Cong., 1st Sess. 3 (1975).

[4] See e.g., "Discipline Now Impossible, School Lawyer Says,"12 *The Special Educator* 1 (May 23, 1997); "Discipline Provisions in new IDEA Cause Serious Concerns," 12 *The Special Educator* 1 (June 6, 1997).

accounts for elementary and secondary school expenses. The amendment, which was withdrawn, would have allowed state and local educational agencies to establish and implement uniform policies with respect to discipline for all children within their jurisdiction, including children with disabilities, and was identical to an amendment offered and defeated during IDEA reauthorization last year.[5]

Interim Alternative Educational Placement Amendment

Representative Livingston has proposed an amendment to the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., which would add a new category to the current provisions on interim alternative educational placements. Essentially, this new subsection would allow schools to place a child with a disability in an interim alternative educational placement if the child intentionally exhibits violent behavior that has resulted or could have resulted in physical injury to the child or others while at school or at a school function. The amendment also eliminates the current requirement that a child with a disability can be placed by a school in an interim alternative educational placement for a maximum of 45 days.

If this amendment was enacted, it would provide the schools with significantly more discretion regarding the placement of children with disabilities who had violated disciplinary rules. The school, on its own authority, would be able to remove a child with a disability from his or her current placement to an interim alternative educational placement for the same amount of time that a child without a disability would be subject to discipline in several situations:

- where a child with a disability brought a weapon to school or a school function (current law);
- where a child with a disability brought drugs to a school or a school function (current law); or
- where a child with a disability intentionally exhibits violent behavior that has resulted in, or could have resulted in, physical injury to the child or to others while at school or at a school function under the jurisdiction of a State or local agency (proposed amendment).

The authority of a hearing officer is unchanged regarding ordering a change in placement to an interim alternative education setting for 45 days when the school has demonstrated by substantial evidence that maintaining the current placement of such a child is substantially likely to result in injury to the child or others.

The House Report for H.R. 4274, H.Rep. No. 105-635, discusses the proposed amendment and states: "The bill includes language amending the Individuals with Disabilities Education Act to give local education agencies flexibility to move a child with disabilities to an alternative educational setting in situations where that child exhibits

---

[5] For a more detailed discussion of this amendment, see Jones, "Individuals with Disabilities Education Act: Proposed Amendment on Uniform Disciplinary Policies," CRS Rep. No. 98-385A (May 5, 1998).

violent behavior. The behavior covered by this provision is limited to that which occurs at school or a school function. The forty-five day limit does not apply to Sections 615(k)(1)(A)(ii)(I), 615(k)(1)(A)(ii)(II), and 615(k)(1)(A)(ii)(III). An example of a situation covered would be where a child with a disability strikes, with the intent to harm, his or her teacher. The provision is not intended to cover situations such as where a child with epilepsy strikes his or her teacher while experiencing a seizure."

There is some ambiguity concerning the use of the word "intentionally" in the proposed amendment since intent is often difficult to determine, particularly if mental disabilities are involved. However, the report language which illustrates the type of situations meant to be covered and those not covered, provides some guidance.

Although this amendment would give the schools more flexibility with regard to placement, generally it does not otherwise change the due process requirements of the act. For example, a parent would still have the right under 20 U.S.C. §1415(b)(6) to present a complaint regarding the education or placement of the child with a disability. This complaint would be heard by a hearing officer and there is a right to appeal to federal court.[6] Under current law, 20 U.S.C. §1415(k)(7), when a parent requests a hearing to challenge the interim alternative educational setting or the manifestation determination, the child stays put in the interim alternative education setting pending the decision of the hearing officer or the expiration of the time period provided for in paragraph (1)(A)(ii). Since the Livingston amendment eliminates the 45 day period as described in paragraph (1)(A)(ii), the amendment would keep the child in the interim alternative education setting until the hearing officer's decision.

The interim alternative education placement must also meet the requirements of 20 U.S.C. §1415(k)(3). This subsection states that alternative educational settings are to be determined by the IEP (individualized education program) team. The IEP team is composed of at least one regular education teacher, at least one special education teacher, a representative of the LEA (local education agency), an individual who can interpret the instructional implications of evaluation results, the child's parents and wherever appropriate the child with a disability.[7] In addition, the interim alternative educational setting is to be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the IEP's goals. This setting is also to include services and modifications designed to address the inappropriate behavior so that it does not reoccur.[8]

---

[6] 20 U.S.C. §1415(f)-(j).

[7] 20 U.S.C. §1414(d)(1)(B).

[8] 20 U.S.C. §1415(k)(3).