Order Code RS20226
June 8, 1999

Individuals with Disabilities Education Act: Amendment Contained in S. 254, 106th Congress

(name redacted)
Legislative Attorney
American Law Division

Summary

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 *et seq.*, provides federal funds to the states to assist them in providing an education for children with disabilities. As a condition for the receipt of these funds, IDEA contains requirements on the provision of services and detailed due process procedures. In 1997 Congress amended IDEA in the most comprehensive and controversial reauthorization since IDEA's original enactment in 1975. One of the most contentious issues addressed in the 1997 legislation related to the disciplinary procedures applicable to children with disabilities. This issue was raised again in Amendment 355 to S. 254, 106th Congress, the Violent and Repeat Juvenile Accountability and Rehabilitation Act of 1999, which passed the Senate on May 20, 1999. This report will be updated as appropriate.

Background and Current Statutory Language Relating to Discipline

IDEA was originally enacted in 1975 due to the fact that children with disabilities often failed to receive an education or received an inappropriate education. This lack of education led to numerous judicial decisions, including *PARC v. State of Pennsylvania*[1] and *Mills v. Board of Education of the District of Columbia*[2] which found constitutional infirmities with the lack of education for children with disabilities when the states were providing education for children without disabilities. As a result, the states were under considerable pressure to provide such services and they lobbied Congress to assist them.[3] Congress responded with the grant program still contained in IDEA but also delineated specific requirements that the states must follow in order to receive these federal funds.

[1]343 F. Supp. 279 (E.D.Pa. 1972).

[2]348 F. Supp. 866 (D.D.C. 1972).

[3]For a detailed discussion of the intent behind the enactment of P.L. 94-142 see Jones, "The Individuals with Disabilities Education Act: Congressional Intent," CRS Report 95-669 (May 19, 1995).

The statute provided that if there was a dispute between the school and the parents of the child with a disability, the child must "stay put" in his or her current educational placement until the dispute is resolved. A revised stay put provision remains in IDEA.

Issues relating to children with disabilities who exhibited violent or inappropriate behavior have been raised for years and in 1988 the question of whether there was an implied exception to the stay put provision was presented to the Supreme Court in *Honig v. Doe.*[4] Although the Supreme Court did not find such an implied exception, it did find that a ten day suspension was allowable and that schools could seek judicial relief when the parents of a truly dangerous child refuse to permit a change in placement. In 1994, Congress amended IDEA's stay put provision to give schools unilateral authority to remove a child with a disability to an interim alternative educational setting if the child was determined to have brought a firearm to school.

In 1997 Congress made significant changes to IDEA and attempted to strike "a careful balance between the LEA's (local education agency)duty to ensure that school environments are safe and conducive to learning for all children, including children with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free appropriate public education."[5] This current law does not immunize a child with a disability from disciplinary procedures but these procedures may not be identical to those for children without disabilities. In brief, if a child with a disability commits an action that would be subject to discipline, school personnel have the following options:

- suspending the child for up to ten days with no educational services provided,

- conducting 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 expulsion may occur, except that educational services may not cease. If the child's behavior is a manifestation of the child's disability, the school may review the child's placement and, if appropriate, initiate a change in placement.

- placing the child in an interim alternative education setting for up to forty five days (which can be renewed) for situations involving weapons or drugs, and

- asking a hearing officer to order a child be placed in an interim alternative educational setting for up to forty five days (which can be renewed) if it is demonstrated that the child is substantially likely to injure himself or others in his current placement.

School officials may also seek a *Honig* injunction as discussed previously if they are unable to reach agreement with a student's parents and they feel that the new statutory provisions are not sufficient.[6]

---

[4]484 U.S. 305 (1988).

[5]S.Rept. 105-17, 105th Cong., 1st Sess. 28 (1997); H.Rept. 105-95, 105th Cong., 1st Sess. 108 (1997).

[6]For a more detailed discussion of these provisions see Jones, "Individuals with Disabilities (continued...)

School Safety Act of 1999

Violence in schools again surfaced on the congressional agenda with S. 254, the Violent and Repeat Juvenile Accountability and Rehabilitation Act of 1999 which passed the Senate on May 20, 1999 by a vote of 74 to 25.[7] An amendment offered to S. 254 by Senators Frist and Ashcroft to be referred to as the School Safety Act of 1999 was included in the Senate passed legislation. Essentially this amendment would amend section 615 of IDEA to eliminate the requirements regarding disciplinary procedures for children with disabilities who carry or possess a gun or firearm to or at a school, on school premises, or to or at school functions.

Under this amendment, school personnel could discipline a child with a disability who possessed a gun or firearm at school in the same manner as a child without a disability could be disciplined. A child with a disability who is disciplined under this amendment would be able to assert a defense that the carrying or possession of the gun or firearm was unintentional or innocent. This provision could help to address the problem of a child with limited mental capacities who had someone place a gun in his or her backpack; however, the exact implications of this provision are somewhat uncertain since it is not specified to whom or when this defense would be asserted. During debate, Senator Frist stated that this defense would be made to the school's principal or teacher and that the due process procedure applicable would be the same process available to every student.[8]

The Frist/Ashcroft amendment further states that the IDEA provision regarding the continuation of educational services would not be applicable although the local educational agency may choose to continue to provide educational services to the child in a location determined by the local education agency. Educational agencies would not be considered in violation of the IDEA requirements regarding state or local educational agency eligibility for funds[9] because of the provision of discipline, services or assistance under the amendment and actions taken under the amendment are not subject to other procedural safeguard provisions of IDEA.[10]

The definition of firearm for the purposes of the amendment would be the definition at 18 U.S.C. §921 which reads:

> The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

---

[6](...continued)
Education Act: Discipline Provisions in P.L. 105-17," CRS Report 98-42 (April 19, 1999).

[7] 145 C.R. S5691 (May 20, 1999).

[8] 145 C.R. S5541 (May 19, 1999).

[9] 20 U.S.C. §§1412, 1413.

[10] 20 U.S.C. §1415.

The amendment includes conforming changes relating to citations to section 615 of IDEA. Similarly, a subsection would be added to the Gun-Free Schools Act stating that notwithstanding any other provision of 20 U.S.C. §8921, the section shall be subject to the amendment contained in section 615 of IDEA.

The Frist-Ashcroft amendment was the subject of extensive debate in the Senate. Senator Frist stated the amendment would change existing law which he described as allowing "one child in a special education class who brings a gun or a bomb to school (to be)...treated preferentially compared to another child who does not have a disability or is not in special education who brings a gun or bomb to school."[11] Tying this issue to recent school shootings, Senator Frist further observed:

> Clearly the way we have set up this federally mandated disciplinary procedure with this loophole sends students a mixed message about guns in schools. It basically says if you are in special education, you are going to be treated in a special way if you bring a gun into school, but if you are not in special education, you are going to be treated like everybody else and you are going to be expelled. What a mixed message when we are talking about guns. When we are talking about the shootings, the 27 deaths in our classrooms and schools that we have witnessed, we must respond.[12]

Similarly, Senator Ashcroft described the amendment as a "school safety issue."[13] He also stated: "This is a bill that provides for equity, simply saying that principals and superintendents should have the power, without interference from the Federal Government, to remove students from school who come to school with a firearm, an explosive or a gun."[14]

Senator Harkin disagreed with this characterization of the amendment. He noted that under current law "school authorities can unilaterally remove a child with a disability, first of all, for the first 10 days, and provide no services whatsoever. Second, if it is found that their actions were not a manifestation of their disability, then of course he is treated in the same manner as nondisabled children, and can be kept out in a alternative setting forever."[15] Senator Harkin also argued that the amendment would make the schools and communities less safe as children would be out on the streets with no educational services and quoted from numerous letters from police and prison authorities as well as the national PTA, and the National Association of State Boards of Education. The common theme in these letters was concern about denying children with behavioral problems educational services since this was seen as "shift(ing) the problem to the neighborhood and streets surrounding the school."[16]

---

[11] 145 C.R. S5529 (May 19, 1999).

[12] *Id.*

[13] 145 C.R. S5690 (May 20, 1999).

[14] 145 C.R. S5689 (May 20, 1999).

[15] 145 C.R. S5684 (May 20, 1999).

[16] 145 C.R. S5687 (May 20, 1999)(quoting from letter from the National Association of State Boards of Education). It should also be noted that an amendment proposed by Senator Harkin also passed the Senate with S. 254. This amendment, which does not specifically address IDEA, would

(continued...)

Senator Jeffords also opposed the Frist/Ashcroft amendment agreeing with Senator Harkin that current law allows for removal of a child with disability who has a disciplinary problem although educational services must be provided after ten days. Senator Jeffords observed: "the basic question is, in the final analysis, should the school have to afford an alternative education situation and pay for it."[17]

---

[16](...continued)
require school personnel to "ensure that immediate appropriate interventions and services, including mental health interventions and services, are provided to a child removed from school for any act of violence, including carrying or possessing a weapon at school...." Funds are authorized to support this program.

[17] 145 C.R. S5534 (May 19, 1999).