A Review and Evaluation of Research on Suspension and Expulsion of Handicapped Students in Public Schools

Debria D. Young
Western Michigan University

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A REVIEW AND EVALUATION OF RESEARCH ON SUSPENSION AND EXPULSION OF HANDICAPPED STUDENTS IN PUBLIC SCHOOLS

Debria D. Young, Ed.S.
Western Michigan University, 1988

The purpose of this report is to review and synthesize findings of research studies about suspension and expulsion of handicapped students as a disciplinary procedure in public schools.

The first chapter begins with a glossary of frequently used terms and definitions to assist the reader in understanding the terminology used in this paper.

Chapter II reviews literature relevant to suspension and expulsion of handicapped students.

Chapter III cites statutory and mandatory provisions set forth by the Michigan State Board of Education on suspension and expulsion.

Chapter IV explores the historical content on suspension and expulsion of handicapped students.

Chapter V highlights various alternatives educators may utilize to better accommodate handicappers.

Chapter VI provides a summary and evaluation concerning the findings of research studies about suspension and expulsion of handicapped students.
ACKNOWLEDGEMENTS

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Debria D. Young
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CHAPTER I

GLOSSARY OF FREQUENTLY USED TERMS AND DEFINITIONS

Overview

The purpose of this report was: (a) to review and synthesize the findings of research studies about suspension and expulsion of handicapped students as a disciplinary procedure in public schools; (b) to set forth Michigan State Board of Education policy on suspension and expulsion; (c) to advise educators (local intermediate, and state school officials, parents, and advocates) of the statutory references, policy, and mandatory due process procedures to follow when suspending or expelling handicapped students; and (d) to suggest alternatives to suspension and expulsion that school officials may utilize to better accommodate handicapped students disciplinary problems.

Education in general, and Special Education specifically, frequently employ terms and abbreviations which are unfamiliar to most. This glossary contains frequently used terms/definitions which the reader will encounter throughout this paper. These terms/definitions have been defined to give the reader an understanding of the terminology but do not necessarily reflect the "legal"

The following terms/definitions are used quite frequently in this paper. These terms/definitions should be referred to whenever the reader deems it necessary.

Terms and Definitions

Adaptive Behavior: An individual's ability to perform the social roles appropriate for a person of his or her age and gender in a manner which meets the expecta-
tions of home, culture, school, neighborhood, and other relevant groups in which he or she participates. (Michigan State Board of Education, 1988, p. 3)

Agency: A public or private entity or organization including the local education agency, intermediate school district, the department, and any other political subdivision of the state which is responsible for providing education or services to handicapped persons. (Michigan State Board of Education, 1988, p. 3)

Alternative Placement and/or Alternative Program: A placement or a program in a school district other than the one the child is presently receiving. The school district might consider the following alternatives: (a) additional related services; (b) a change in disciplinary procedures; (c) increased time in the current special program; (d) provision of special program in another setting including, but not limited to special schools, homebound, hospitals and other institutions; and (e) involvement with programs funded by other agencies such as community colleges and others. It is important to ensure that any proposed change in the educational program meets the individual needs of the student and allows for placement in the least restrictive environment. (Berrien County Intermediate School District, 1988, p. 20)
Ancillary and Other Related Services: Services specially designed to meet the unique needs of a handicapped person who is under 26 years of age and who is determined by an individual planning committee or a hearing officer to have a characteristic or set of characteristics that necessitates special education ancillary and other related services, or both. Ancillary and other related services may include any of the following:

1. audiological, medical, psychiatric, psychological, speech, and language, or educational evaluation.

2. occupational, physical, recreational, music, art, or therapy, mobility and orientation services; transportation; school psychological, school social work, and instruction provided by special education teachers designed to assist regular education students who are home-bound, hospitalized, or placed in juvenile detention facilities. (Michigan State Board of Education, 1988, p. 3)

Annual Review and/or Individual Educational Plan Review: A required yearly evaluation for each child who is receiving special education services. This review will evaluate how the child has performed and to what extent he/she has met the goals outlined in his previous education program. (Berrien County Intermediate School District, 1988, p. 56)
**Autism (AI):** A type of impairment established in an IEPC which refers to a disability characterized by a disturbance in the capacity to relate with people, events, and objects. It further involves speech and/or communication relay as well as inconsistent response to sensory stimuli. These disturbances are visually apparent before 30 months of age. "Autism" means a lifelong developmental disability which is characterized by disturbances in the rates and consequences of cognitive, affective, psychomotor, language, and speech development. (Berrien County Intermediate School District, 1988, p. 51)

**Board and/or School Board:** The governing body of a local school district or a local act school district unless clearly otherwise stated. (Michigan Department of Education, 1984, p. 2)

**Change—Change in Educational Placement, and/or Change in Educational Status:** Any change in program or placement of a handicapped child. It may include moving from regular education to special education; from special education to regular education; from one special education program; or a significant change in the amount of time spent in a particular special education program. Anytime during the course of the year, if it is felt that a change in educational program of the child is justified, the school must convene an Individual Educational Planning Com-
mittee (IEPC). This potential change in program may include any of the reasons previously cited under this definition. (Michigan State Board of Education, 1988, p. 3)

**Complaint:** An informal or formal allegation that a school district is failing to comply in whole or in part with mandated rules and procedures. Informal complaints are generally oral and would hopefully be resolved on an informal basis. Formal complaints must be in writing to the intermediate school district and will result in a formal investigation with copies of the findings sent to the State Department of Education, the local district, and the parent. (Michigan State Board of Education, 1988, p. 3)

**Consent:** An agreement in writing, to carry out an activity after being fully informed, in one's native language, of all information relevant to the activity. Consent is voluntary and may be revoked in writing at any time. (Michigan State Board of Education, 1988, p. 4)

**Department:** The Michigan State Department of Education. (Michigan State Board of Education, 1988, p. 4)

**District of Residence:** The district where the parent lives. (Michigan State Board of Education, 1988, p. 4)

**Due Process:** A set of procedures governing parent and child rights. They include obtaining parental permission and involvement in the overall special education
process. Due process must be followed by the local and intermediate school districts when dealing with the identification, evaluation, placement and programming of handicapped children. (Michigan State Board of Education, 1988, p. 4)

Educable Mentally Impaired (EMI): A type of impairment established at the Individual Educational Planning Committee (IEPC), which is primarily one of mild mental retardation resulting in below academic achievement. The educable mentally impaired lacks development primarily in the cognitive domain and all impairment of adaptive behavior. (Berrien County Intermediate School District, 1988, p. 52)

Education of All Handicapped Children Act of 1975 (EAHCA and/or P.L. 94-142 of 1975): A federal law that has the effect of strengthening the mandates upon school districts and gives special emphasis to such areas as parent rights, procedural safeguards, and evaluation process. Education of all Handicapped Children Act of 1975 will be referred to hereafter as P.L. 94-142 (1975) or EAHCA (1975). Requirements of P.L. 94-142 (1975) include the following:

1. School districts will assure that all handicapped children have available to them a free and appropriate public education.
2. School districts assure that the rights of handicapped person and their parents are protected.

3. School districts assure that at least annually each handicapped person receiving special education services will have an Individualized Educational Program (IEP) which will be developed to best meet the child's needs in the educational setting.

4. School districts further assure that every identified handicapped child will receive special education services in the least restrictive environment. This means that, as much as possible, each handicapped child will be educated with nonhandicapped children, unless otherwise specified in the IEP, will be educated in the program nearest the child's home. (Berrien County Intermediate School District, 1988, p. 51)

**Eligibility:** A classification determined at the Individual Educational Planning Committee (IEPC) which refers to whether or not a child has been identified as handicapped by that committee and in need of special education services. (Berrien County Intermediate School District, 1988, p. 52)

**Emergency Removal:** An immediate removal from the students' educational program class, transportation, or any aspect of programs or services identified in the individualized education program by action of the board of
education or its designee when the student's presence poses a dangerous threat to self, other students, school personnel, or school property. (Michigan Department of Education, 1986, p. 4)

**Emotionally Impaired (EI):** A type of impairment established at the Individual Educational Planning Committee (IEPC) which consists primarily of behavior which is disruptive to the learning process. The emotionally impaired shall be determined through manifestation of behavioral problems primarily in the affective domain, over an extended period of time, which adversely affect the person's education to the extent that the person cannot profit from regular learning experiences without special education support. (Berrien County Intermediate School District, 1988, p. 52)

**Evaluation:** Formal or informal tests which may measure such things as intellectual ability, academic achievement, vision or hearing loss, motor coordination, etc. The results of which will be shared at the IEPC meeting and provide information on which decision of eligibility and placement will be based. (Berrien County Intermediate School District, 1988, p. 52)

**Exceptional:** Mentally impaired, trainable mentally impaired, educable mentally impaired, emotionally impaired, hearing impaired, visually impaired, physically and other-
wise health impaired, speech and language impaired, pre-
primary impaired, severely mentally impaired, learning
disabled, severely multiply impaired, and autism. (Berrien
County Intermediate School District, 1988, p. 52)

Expulsion and/or Long Term Suspension: An exclusion
of a student for more than 10 days from his or her educa-
tional program, class, transportation, or any aspect of
the programs or services identified in the individual
education program by action of the board of education or
its designee. Expulsion is the exclusion of a student
from the school system by the Board. Expulsion is an
indefinite suspension from school ranging from permanent
expulsion to a semester or the remainder of the school
year. (Michigan Department of Education, 1986, p. 4)

Free Appropriate Public Education: A requirement
that public schools must provide all handicapped children
with special education and related services which: (a)
have been provided at public expense, under public super-
vision and direction, and without charge; (b) meet the
standards of State Educational Agency; (c) include an
appropriate preschool, elementary, or secondary school
education in the State involved; and (d) are provided in
conformity with the individual educational program re-
quirements. (Berrien County Intermediate School District,
1988, p. 51)
**Fourteenth Amendment:** No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process at law; nor deny to any person within its jurisdiction the equal protection of laws. (Reutter, 1985, p. 4)

**Handicapped an/or Handicapped Person:** A person identified by an Individual Educational Planning Committee (IEPC) as having one of the following impairments listed within this glossary of terms: educable mentally impaired (EMI), emotionally impaired (EI), autistic impaired (AI), hearing impaired (HI), visually impaired (VI), physically otherwise health impaired (POHI), speech and language impaired (SLI), preprimary impaired (PPI), learning disabled (LD), severely mentally impaired (SMI), trainable mentally impaired (TMI), homebound or hospitalized (HH), and severely multiply impaired (SXI). "Handicapped person" means a person who is under 26 years of age and who is determined by an individualized planning committee or a hearing officer to have a characteristic or set of characteristics that necessitates special education or ancillary and other related services, or both. (Berrien County Intermediate School District, 1988, p. 53).
**Hearing Impaired (HI):** A type of impairment established at an Individual Educational Planning Committee (IEPC), consisting of a hearing problem which interferes with learning. The term "hearing impaired" is a generic term which includes both deaf persons and those who are hard of hearing which refers to students with any type of degree of hearing loss that interferes with development or adversely affects educational performance in a regular classroom setting. (Michigan State Board of Education, 1988 p. 9)

**Hearing:** A hearing is a formal procedure requested by the parent or the school district when a disagreement occurs. The hearing is responsible for settling disagreements among a parent or handicap person with an agency. (Berrien County Intermediate School District, 1988, p. 52)

**Hearing Officer and/or Impartial Hearing Officer:** An officer who will make a decision on the "appropriateness" of a school's individualized educational program for a particular child. The hearing officer is utilized when a parent or handicapped child is dissatisfied with the Individual Educational Program (IEP). These hearings are to be conducted by the state or local educational agency responsible for providing services. However, no employee at the agency involved in the education or care of the child may conduct the hearing; the hearing must be con-
ducted by an impartial hearing officer. The decision of the hearing officer is final unless appealed. (Michigan State Board of Education, 1988, p. 25)

**Homebound and/or Hospitalized (HH):** A type of impairment which consists of a physical problem resulting in a student's inability to attend school, and would require the services of a teacher while confined to the home or hospital. (Berrien County Intermediate School District, 1988, p. 53)

**Independent Educational Evaluation (IEE):** An evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student. A contracted agent for the purpose of conducting an independent evaluation is not considered an employee of the public agency. (Michigan State Board of Education, 1988, p. 5)

**Individual Educational Program (IEP):** A specific program of instruction which contains short and long-term objectives and which must be in effect at the time a child is placed into a special education program. It further must be reviewed and, if necessary, modified at least annually. The parent will be invited to attend a meeting designed to develop or change this educational program. The Individual Educational Program (IEP) is a statement of a handicapped child's present level, future
educational goals for the child, future educational services to be provided to him or her, and the extent to which he or she will be able to participate in regular educational programs. (Michigan State Board of Education, 1988, pp. 16-17)

**Individual Educational Planning Committee (IEPC):** The Intermediate School District acts as an intermediary between the State Department of Education and the local school districts. Among its responsibilities is the development of a Special Education Plan to implement programs and services throughout the county. It also serves in a fiscal and monitoring capacity for special education programs operated within local school districts and also development primarily the result of several handicaps in the physical and/or intellectual areas. (Berrien County Intermediate School District, 1988, p. 53)

**Instructional Services and/or Instructions:** Services provided by teaching personnel which are specially designed to meet the unique needs of a handicapped person under the age of 26 years of age. A teacher providing instructions to handicapped students. (Michigan State Board of Education, 1988, p. 5)

**Learning Disabled (LD):** A type of impairment established at the Individual Educational Planning Committee (IEPC), which establishes itself in below average achievement which
is not primarily based on limited intellectual ability or poor social economic or cultural background. "Learning Disability" means a disorder in/or more of the basic psychological processes involved in understanding or in using language spoken or written which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, motor handicaps, mental retardation, emotional disturbance, autism, environmental cultural, or economic disadvantage. (Michigan State Board of Education, 1988, pp. 10-11)

**Least Restrictive Environment:** The concept of educating a handicapped child with children who are in regular education programs when beneficial to the handicapped student and not disruptive to the learning of others. The determination of least restrictive environment should be made at the Individual Educational Planning Committee (IEPC) based on the child's individual needs. (Berrien County Intermediate School District, 1988, p. 53)

**Local School District:** Any of the local school districts which operate regular and/or special education
programs and who have primarily responsibility for the operation and maintenance of these programs. (Berrien County Intermediate School District, 1988, p. 53)

**Mainstreaming:** A technique to ensure that handicapped children are educated, to the maximum extent appropriate, with nonhandicapped children in regular classes. Impediments to the learning process and to the normal functioning of handicapped children in their regular school environment, where possible, are to be overcome by the provision of special aids and other support services rather than by separate schooling for the handicapped. (Berrien County Intermediate School District, 1988, p. 53)

**Multidisciplinary Evaluation Team (MET):** A minimum of two persons who are responsible for evaluating students suspected of being handicapped or handicapped person being reevaluated. The team shall include at least one special education teacher and another specialist with knowledge in the area of the suspected disability. (Michigan State Board of Education, 1988, p. 5)

**Notice:** A notice is to assure that the rights of handicapped children, and their parents or guardians, are not overlooked during the course of the overall special education process. "Notice" means the following:

1. Right to notice before the District initiates or changes or refuses to initiate or change the identification, evaluation, program, or placement of the child.
2. Right to have the notice in writing, in the parents' native language, at a level understandable to the general public.

3. Right to have the notice describe the proposed action, explain why it is proposed, describe the options considered and explain why these options were rejected.

4. Right to be notified of each evaluation, procedure test, record or report the agency will use as a basis for any proposed action. (Berrien County Intermediate School District, 1988, p. 57)

Operating School District: The district providing the educational program for a student. (Berrien County Intermediate School District, 1988, p. 52)

Parent and/or Guardian: The mother, father, or legally designated guardian of the handicapped person. "Parent" also means the handicapped person when the person reaches 18 years of age, if a legal guardian has not been appointed by appropriate court proceedings. (Michigan State Board of Education, 1988, p. 5)

Parent Advisory Committee (PAC): A committee established by the Public Act 451 of 1976 consisting of parents of handicapped children, representing the K-12 local districts in the county, who primary responsibility is the cooperative development of the intermediate special education plan. Other responsibilities may include acting as
parent advocates and giving input to the development of special education programs and services throughout the county. (Berrien County Intermediate School District, 1988, pp. 53-54)

**Pendency and/or Stay Put:** A part of the due process proceeding, where the student must remain in the current placement until those due process procedures are completed, "unless the parents, and agency agree otherwise." (Michigan Department of Education, 1986, p. 9)

**Physically and Otherwise Health Impaired (POHI):** A type of impairment established at the Individual Educational Planning Committee (IEPC) and based upon medical information which is a physical or health disorder that interferes with learning or requires physical adoption in the school environment. (Berrien County Intermediate School District, 1988, p. 54)

**Plan an/or Special Education Plan:** A requirement established by P.A. 451 (1976) and developed by the Intermediate School District (ISD) in cooperation with the Parent Advisory Committee (PAC) and the Superintendents Advisory Committee and is intended to specify and identify the delivery of special education services within the county. Once approved by the Michigan State Board of Education, its policies have the effect of law and must be
followed both by the local and intermediate school districts. (Berrien County Intermediate School District, 1988, p. 54)

**Preprimary Impaired:** Any child from birth to 5 years of age whose primary impairment cannot be differentiated through existing criteria with severely mentally impaired, trainable mentally impaired, educable mentally impaired, emotionally impaired, hearing impaired, visually impaired, physically and otherwise health impaired, speech and language impaired, learning impaired, who manifests an impairment in one or more areas of development equal to or greater than half of the expected development for chronological age, as measured by more than one developmental scale which cannot be resolved by medical or nutritional intervention. (Michigan State Board of Education, 1988, p. 10)

**Procedural Safeguards:** Safeguards required by the school and that are necessary to accomplish the following:

1. Insure confidentiality and protection of records.
2. Provide parent notice and secure written consent before preplacement evaluation of placement of a handicapped student.
3. Advise and inform handicapped persons their parents, and other members of the community of the special education opportunities required under the law; the obliga-
tions of the local and intermediate school district; and the title, school address, and the telephone number of the representatives of both the local and intermediate school districts who can provide information about the special education opportunities.

4. Inform parents of their rights to obtain an independent education evaluation and due process hearing.

5. Advise parents of the complaint process. (Berrien County Intermediate School District, 1988, pp. 16-23)

**Public Act 451 of 1976 (P.A. 451 and/or the School Code of 1976):** Public Act 451 of 1976 will be referred to hereafter as the School Code of 1976 or P.A. 451 (1976). Essentially, P.A. 451 (1976) may be summarized by the following:

1. All identified handicapped children in the State of Michigan have a right to a public school education assigned to meet their individual needs.

2. Decisions on program placement for handicapped children must occur at an Individual Educational Planning Committee (IEPC). This committee must include representatives from the evaluation team, the local and intermediate school districts, and the parent. As members of the Individual Educational Planning Committee, parents must be involved and participate in the decisions of the committee which effects the education of their child.
3. Regardless of the severity of the handicap, the child is entitled to a quality education from birth through age 25 (or until graduation) from an approved high school program.

4. The parent must be involved in all recommended changes or programs for his/her child. The parent further has the right to disagree with decisions regarding the identification and placement of his/her child and to request a formal hearing to resolve disagreements.

5. Annually, the Intermediate School District (ISD) must develop a Special Education Plan which describes the specific programs and their implementation within the county. This plan is developed cooperatively with the local school districts and the Parent Advisory Committee and must be approved by the State Board of Education. Copies of the Plan are available through the local school district Special Education office or the Intermediate School District.

6. P.A. 451 further requires that a Parent Advisory Committee (PAC) be established. It is composed of parents representing all of the K-12 districts within the county. The PAC meets regularly at the Intermediate School District and has the responsibility of acting in an advisory capacity in the development of the Special Education Plan. Members of the Parent Advisory Commit-
tee (PAC) further may serve as advocates to other parents of handicapped children and help resolve concerns which may result in the overall special education process.
(Berrien County Intermediate School District, 1988, pp. 50-51)

Public Expense: The school district either pays for the full cost of the evaluation, program, or services, including transportation and room and board, or ensures that such is provided at no cost to the parent. (Michigan State Board of Education, 1988, p. 6)

Records: All information accumulated by the local and Intermediate School District and may include academic information, psychological information, attendance information, special education placement and programming information, etc. They are confidential and may not be shared without signed parental permission and are available for inspection by the parent, subject to school district policy and procedure. (Berrien County Intermediate School District, 1988, p. 54)

Referral: A request by the parent or guardian, a school person in the system, or from any professional person in the community who has cause to believe that the child may benefit from a special education service.
(Berrien County Intermediate School District, 1988, p. 61)
Regular Education: Education other than special education programs and services. (Michigan State Board of Education, 1988, p. 6)

Rehabilitation Act of 1973 (Section 504): Section 504 of the Rehabilitation Act of 1973 states a handicapped person is anyone with a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Section 504 protects students covered by P.L. 94-142 (1975), and a significant provision of Section 504 prohibits discrimination solely by reason of the handicap in federally financed programs or activities. The Rehabilitation Act of 1973 will be referred to hereafter as Section 504.


Serial Suspension: Successive disciplinary suspensions from educational or related services each of 10 days or less, for the same student during the school year. (Michigan Department of Education, 1986, p. 4)

Special Education: Specifically designed instruction, at no cost to the parents, to meet the unique educational needs of the special education student and is designed to develop the maximum potential of the special education
Special Education Advisory Committee: A committee appointed by the state board of education to advise the state board of education on matters related to the delivery of special education programs and services. (Michigan State Board of Education, 1988, p. 7)

Special Education Classroom: A classroom that is under the direction of an approved special education teacher and in which a person receives specially designed instruction. (Michigan State Board of Education, 1988, p. 7)

Special Education Plan: A requirement of P.A. 451 (1976) and developed by the Intermediate School District in cooperation with the Parent Advisory Committee (PAC) and the Superintendents Advisory Committee (SAC) and is intended to specify and identify the delivery of special education services within the county. Once approved by the State Board of Education, its policies have the effect of law and must be followed both by the local and intermediate school districts. (Berrien County Intermediate School District, 1988, p. 10)

Special Education Program and Services: Educational and training services designed for handicapped persons operated by local school districts, intermediate school
districts, the Michigan School for the Blind, the Michigan School for the Deaf, the Department of Mental Health, the Department of Social Services, or a combination thereof, and ancillary professional services for handicapped persons rendered by agencies approved by the State Board. The program shall include vocational training, but not include academic programs of college or university level. (Michigan Legislative Service Bureau, 1976, p. 380.6)

**Speech and Language Impaired (SLI):** A type of impairment which primarily consists of language and/or communication difficulties which interfere with learning and/or adjustment. (Berrien County Intermediate School District, 1988, p. 54)

**Services:** Instructional services or ancillary and other related services as designed to meet the unique needs of a handicapped person to age 25. See ancillary and other related services in this glossary. (Michigan State Board of Education, 1988, p. 6)

**Severely Mentally Impaired (SMI):** A type of impairment established at the Individual Educational Planning Committee (IEPC) which manifests itself in an extreme lag in development, primarily as a result of extensive mental retardation. (Berrien County Intermediate School District, 1988, p. 54)
Severely Multiply Impaired (SXI): A type of impairment established at the Individual Educational Planning Committee (IEPC) which consists of poor development primarily the result of several handicaps in the physical and/or intellectual areas. (Berrien County Intermediate School District, 1988, p. 54)

State Board: The State Board of Education unless clearly otherwise stated. (Michigan Legislative Service Bureau, 1976, p. 380.6)

State Reviewing Official: An official who has the authority to do all of the following:

1. Require a prehearing conference to clarify matters pertaining to the hearing.

2. Specify the period of time, not to exceed one calendar year, during which the decision will be in force unless appealed or reconsidered under subdivision.

3. Upon showing a substantial change in circumstances, either party may request a modification of the final hearing decision for the period of time the decision is to be in force. The state official rendered that decision is no longer available and if the parties cannot agree on a state reviewing official, the department may appoint another state reviewing official to consider the request for modification of the decision.
4. Specify those uncontested portions of the student's individualized educational program only if necessary to assure that the decision can be implemented.

5. Control the conduct of parties or participants in the hearing for the purpose of assuring an orderly procedure.

6. Suspend or postpone the hearing procedure for good cause.

7. The state reviewing official shall disclose to both parties any relationship of a professional or personal nature that might have a bearing on the state reviewing official ability to conduct a fair hearing or render an impartial decision and shall consider to disqualify himself or herself. (Michigan State Board of Education, 1988, p. 25)

**Superintendent:** The chief executive officer of the public school district or his or her designee. (Michigan State Board of Education, 1988, p. 5)

**Superintendent Advisory Committee (SAC):** All the superintendents within the local and intermediate school districts. The committee meets on a regular basis in an advisory capacity to assure quality special education programs throughout the county. (Berrien County Intermediate School District, 1988, p. 55)
Suspension: A temporary exclusion (a period of time between one hour and ten days) from the student's educational program, class, transportation, or any aspect of programs or services identified in the individualized educational program by action of the Board of Education or its designee if the student receives a long-term suspension or by action of the Board of Education if the student is expelled. Generally, suspension is a definite term meaning preferably ten days or less. (Michigan Department of Education, 1984, p. 4)

Trainable Mentally Impaired (TMI): A type of impairment established at the IEPC which is evidenced by a lag in development due to moderate mental retardation. (Berrien County Intermediate School District, 1988, p. 55)

Visually Impaired (VI): A type of impairment established at the Individual Educational Planning Committee (IEPC) which is evidenced by poor vision and which interferes with learning. This visual impairment interferes with development or adversely affects educational performance. (Berrien County Intermediate School District, 1988, p. 55)
CHAPTER II

REVIEW OF LITERATURE

In Chapter II, a general review of literature pertinent to suspension and expulsion of handicapped students was presented since detailed research findings are cited in Chapters III and IV.

Within the past fifteen years, litigation and legislation on behalf of handicapped children have had a profound impact on public school programs in the United States. Public Law 94-142, the Education for All Handicapped Children Act (EAHCA) of 1975 through the spending power of Congress, has created national educational policy for handicapped students. This legislation and similar legislation and regulations in all 50 states have granted handicapped students the right to a free appropriate education in the least restrictive environment. Additionally, this federal policy guarantees non-discriminatory testing, evaluation, placement, and individual educational plans (IEP's).

Parents of handicapped students, or of students thought to be handicapped, also have granted due process rights related to assessment, placement, and delivery of educational services. While the educational needs of the handicapped youngsters have been addressed by statutes
and regulations, disciplinary problems of the students have been ignored. (Adamson, 1984; Lichtenstein, 1980; & Leone, 1985) Regulations that clarify the implementation of Education for All Handicapped Children Act (1975) do not discuss disciplinary procedures. In past years, proposed regulations (U.S. Department of Education, 1982) addressing disciplinary policy and handicapped pupils have been withdrawn along with other proposed regulations by the Department of Education.

Grosenick & Huntze (1980), as part of the National Needs Analysis in Behavior Disorders reviewed issues in the education of adolescents with behavior disorders. Grosenick & Huntze (1980), characterized the unserved behaviorally disordered as "most often adolescent age, not enrolled in school, continually truant and/or continually suspended. (pp. 45-46)

Problems associated with maintaining order in schools are a source of continuing concern (Flygare, 1981). Polls on attitudes toward education has consistently identified discipline as a major issue (Gallup, 1983, 1984). Most school districts during the past decade have developed written codes of student conduct (National Association of Secondary School Principals, 1981) which contain due process provisions for short-term suspensions.
that conform to the landmark Supreme Court decision in **Goss v. Lopez**, (1975). This case held that an informal "hearing" or meeting with the disciplinary authority was required for short-term suspension of up to 10 school days. Procedures for expulsion of students are more formal than the **Goss v. Lopez** requirements and require a hearing before a school board.

Reutter (1985) concluded with the following concerning **Goss v. Lopez**:

This appeal by various administrators of the Columbus Ohio Public School system (CPSS) challenged the judgment of a three-judge federal court, declaring that the appelles -- various high school students in the CPSS -- were denied due process of law contrary to the command of the Fourteenth Amendment in that they were temporarily suspended from their high school without a hearing either prior to suspension or within a reasonable time thereafter, and enjoining the administrators to move all references to such suspensions from students' records. Events calling for discipline are frequent occurrences and sometimes require immediate effective action. Suspension is considered not only to be a necessary tool to maintain order but a valuable educational device. The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. (pp. 773-774, 777)

Handicapped students, like non-handicapped peers violate school rules; occasionally they disobey their
teachers, defy school authorities, and are truant. School systems across the country are discovering education for the handicapped, parents and advocates are challenging school's disciplinary procedures. Administrators charged with maintaining order in the public schools face the following dilemmas: How can they promote an atmosphere conducive to learning and meet the educational needs of disruptive or unruly handicapped pupils? If a handicapped student is suspended or expelled from school for disciplinary reasons, is such action a violation of the child's right under P.L. 94-142? While attempting to judiciously and fairly enforce the code of student conduct, should the principals, assistant principal or disciplinary authority treat learning disabled, mentally retarded, or seriously emotionally disturbed youth in the same manner as other students?

In recent years, parents of suspended and expelled handicapped students have gone to court to clarify these issues/questions. Plaintiffs in these court cases have brought some of the following questions before the courts:

1. Is suspension or expulsion of a handicapped pupil a change in educational placement, and as such, does it entitle students to the procedural safeguards by P.L. 94-142?
2. Can a handicapped student be suspended for misbehavior related to handicapped condition?

3. If misbehavior is related to a handicapped condition, is suspension or expulsion a denial of free appropriate public education guaranteed by P.L. 94-142 (Leone, 1985, p. 113)?

These questions are answered in great depth in the next chapter.

Public schools have the obligation under federal and state law to provide a free and appropriate public education which has been designed to develop the maximum potential of all students eligible for special education (School Code, 1976). When handicapped students, like non-handicapped students, engage in inappropriate behaviors, a common inclination is to deal with the handicapped student in the same manner as a nonhandicapped student. However, the reason for engaging in the inappropriate behavior may be due to the student's handicapped condition or inappropriate special education placement, and it is because of the handicap that the student is to be receiving the special education programs and services necessary to allow the student to benefit from education. Courts have determined that handicapped students are not to be treated like non-handicapped students when it comes to responding to in-

Dagley (1982) suggested that attempting to determine whether a relationship exists between misbehavior and handicapping condition is an exercise in futility, and further, that disciplinary policies ought to be the same for all children within the school. This line of thinking ("one size fits all"), prior to the passage of the Education for All Handicapped Children Act (1975), resulted in the exclusion and/or miseducation of millions of handicapped children from our nations' schools.
Today, educators are aware of the differences between handicapped students and nonhandicapped students' misbehaviors. However, schools must provide handicapped students with due process procedures and safeguards required in Section 504 and P.L. 94-142. Exclusion, suspension, and expulsion of handicapped students due to their handicapping condition (misbehaviors) is no longer acceptable. More constructive alternatives to suspension or expulsion must be implemented in schools to better meet the needs of these students.

Educators, parents, and advocates for handicapped children have asked the courts to define educational rights granted by the Education for All Handicapped Children Act (EAHCA) of 1975, as amended by P.L. 94-142: the Fourteenth Amendment; Section 504 of the Rehabilitation Act of 1973; the School Code of 1976; and the students discipline code. One issue, suspension and expulsion of handicapped children, has been particularly difficult for parents, courts, and school administrators to address. Regulations implementing P.L. 94-142 do not discuss discipline; consequently, when serious disciplinary infractions of the school code involve handicapped pupils, parents and school administrators are unsure of their rights and responsibilities.

Having raised pertinent issues/questions related to suspension and expulsion of handicapped students,
the proceeding chapter (Statutory and Mandatory Provisions) reviews statutory references, policy, and due process procedures required for suspension and expulsion of handicapped students. These various procedures informs the reader of the most current rules, regulations, and legal requirements to follow for suspension and expulsion of handicapped pupils.
CHAPTER III

STATUTORY AND MANDATORY PROVISIONS

Overview

This chapter will discuss appliable legislation, statutory and mandatory provisions set forth by Michigan State Board of Education on suspension and expulsion of handicapped students. These mandatory provisions are cited in order to inform school officials (local intermediate, and state) parents, and advocates of the strict rigid procedures to follow when suspending and expelling handicappers.

Appliable Legislation

In order to pinpoint specific issues and questions related to the disciplinary suspension and expulsion of handicapped students in public schools, it is first necessary to identify the revelant statutory and man­datory provisions (appliable legislation and regulations) which impinge on this issue. Two overlapping pieces of federal legislation and their accompanying regulations are pertinent: Education for All Handicapped Children Act (1975) as amended by Pulbic Law 94-142 and Section 504 of the Rehabilitation Act of 1973.
It is instructive to examine these laws and regulations in more detail in order to become familiar with those sections which the courts base their decisions and findings. Public Act 451 (P.A. 451) of 1976 commonly referred to as the School Code of 1976 was another act that has set guidelines for disciplining handicappers.

Statutory References

The reference for suspension or expulsion of pupils is found in Part 16 of P.A. 451 of 1976 commonly known as the School Code of 1976. Part 16 is entitled, "Board of Education; Powers and Duties Generally." Section 1311 sets forth the authority of the Board of Education. It follows:

380.1311 Suspension or expulsion of pupils; grounds; evaluation of handicapped pupils. (M.S.A. 15.4131)

Sec. 1311. The board may authorize or order the suspension or expulsion from school of a pupil guilty of gross misdemeanor or persistent disobedience when in the board's judgment the interest of the school may demand the authorization or order. If there is reasonable cause to believe the pupil is handicapped*, and the school district has not evaluated the pupil in accordance with rules of the state board, the pupil shall be evaluated immediately by the intermediate school district in constituent in accordance with section 1711. (Michigan Legislative Service Bureau, 1972, p. 380.1301)

*Note: This position statement is limited to students who have been determined to be handi-
capped pursuant to Administrative Rules for Special Education. It is suggested that school districts define reasonable cause to believe that the pupil is handicapped in their policies. It is recommended that this be interpreted to mean that circumstances are observed that would lead a reasonable person, acting impartially and without prejudice, to believe the pupil is handicapped. (Michigan Department of Education, 1986, p. 2)

Most of the state laws directly affecting the conduct of students are found in Act 451 of the Public Acts of 1976, as amended. This act will be hereafter be referred to as the School Code of 1976. The local boards of education have the responsibility under the School Code of 1976 to establish policies that will assure a manageable and safe educational environment. The responsibilities are specified in the School Code of 1976 as follows:

380.1261 Care, custody, and management of school and property. (M.S.A. 15.41255)

Sec. 1261. The board of a school district shall have the general care and custody of the schools and property of the district and shall make and enforce suitable regulations for the general management of the schools and the preservation of the property of the district.

380.1300 Regulations generally. (M.S.A. 15.41300)

Sec. 1300. The board of a school district shall make reasonable regulations relative to anything necessary for the proper establishment, maintenance, management, and carrying on of the public schools of the district, including regulations relative to the conduct of the pupils concerning their safety while in attendance at school or enroute to and from school. (Michigan Department of Education, 1984, p. 4)
It is recommended that every district should have a student code of conduct which describes the rules and policies related to student conduct.

Policy Statement

It is the policy of the Michigan State Board of Education (1984) that handicapped students may be suspended from school if they are guilty of a gross misdemeanor or persistent disobedience. Further, a handicapped student may receive a long-term suspension or be expelled for the same reasons but only after an individual educational planning committee (IEPC) determines that:

a. The determination of eligibility is appropriate.

b. The gross misdemeanor or persistent disobedience is not a manifestation of the student's handicapping condition.

c. The student's individualized education program (IEP) currently reflects the special education programs and services needed to meet the unique educational needs of the student. (Michigan Department of Education, 1984, p. 3)

Even if these standards are met through decisions of the IEPC and the board of its designee issues a long-term suspension to the student or the board completes the expulsion process, the school district continues to have the responsibility for providing an education service. If appropriate, the district may assist the student and/or parents in obtaining educational services.
through another agency. (Michigan Department of Education Position, Statement: Suspension and Expulsion Handicapped Students, 1986, pp. 2-3)

Mandatory Procedures

General Procedures for Suspension

The procedures that follow are based on a review of constitutional safeguards and comply with Section 1311 of the School Code of 1976. These procedures dealing with the handicapped comply with requirements of Public Law 94-142 and Section 504 of the Rehabilitation Act of 1973. The procedures outlined under each heading specific due process procedures that are to be followed by all districts in implementing local policies related to suspension. The procedures that are stated throughout this chapter were found in Michigan Department of Education Position Statement: Suspension and Expulsion of Handicapped Students (Michigan Department Of Education, 1986) and the Proposed State Board of Education Policy on Due Process Procedures for Suspension and Expulsion (Michigan State Board of Education, 1984). The conditions that follow apply to suspension:

1. The legal authority to suspend rests with the Board of Education under Section 1311 of the School Code of 1976. Only those persons authorized by the board to act in their behalf may suspend a student from school.
2. Students may only be suspended for good cause.

3. The length of suspension must be in relationship to the severity of the offense and consistent with criteria established in the board policy for length of suspension. Previous behavior may be considered in determining the length of suspension.

4. A student may only be suspended once for any given offense. (Michigan State Board of Education, 1984, pp. 1-2)

Due Process Procedures

1. A student being considered for suspension of 10 days or less must be provided an informal administrative hearing. As a minimum, this will include a meeting between the principal or other person authorized by the board to administer suspension to the student. The purpose of this hearing is to notify the student of the charges and to provide the student the opportunity to defend him or herself.

   a. The designated school representative convening the hearing must give the student oral or written notices of the charges.

   b. If the student denies the charges, the designated school representative must provide an explanation of the evidence and an opportunity for the student to provide his or her side of the story.

   c. A judgment is made by school personnel based on the evidence and the student's defense.

   d. Where there is justification to suspend, the designated school representative provides oral notice to the student and where possible, the parent. Immediately following the decision to suspend, the parent should be notified in writing. The notice includes
the length of the suspension and any special conditions relating to it.
(suspension form the bus only requiring the student to get to school on his or her own, procedures and requirement to make up lost work, etc.)

2. Students being considered for suspension for more than 10 days must be provided a formal administrative hearing. The hearing procedures and criteria for long-term suspension should be specified by Board policy, this option should not be used without first consulting with the school attorney. (Michigan State Board of Education, 1984, p. 2)

Suspending Students Suspected of Being Handicapped

Section 1311 of the School Code of 1976 requires that students suspected of being handicapped be referred immediately to the intermediate school district for evaluation.

1. The district of residence is responsible to evaluate the student or contract for an evaluation as prescribed by Section 1751 of the School Code. If the local school district has not evaluated the student prior to suspension, the intermediate shall arrange for the evaluation. If the parent refuses permission to evaluate, the district should initiate a hearing to determine if there is reason to believe the student is handicapped and seek the permission of the hearing officer to evaluate the student as in R 340.1721(2) of the Special Education Rules.

2. Following the evaluation, the operating district shall convene an individualized educational planning committee (IEPC) meeting as prescribed in R340.1721b through R340.1725d.

3. If the student is found eligible for special education through the IEPC process, the suspension will terminate immediately and the student will be placed in the appropriate programs and services.
4. If the student is found not eligible, the student will complete the requirements of suspension. (Proposed Board of Education Policy on Due Process Procedures for Suspension and Expulsion, 1984, pp. 1-3)

Suspension of Handicapped/Special Education Students

A handicapped student may be suspended if guilty of gross misdemeanor or persistent disobedience. The length of the suspension should be in relationship to the severity of the offense. A student may only be suspended once for each episode of inappropriate behavior. A suspension should not exceed 10 school days. A single suspension of more than 10 days or an accumulation of suspensions totally more than ten school days shall constitute long-term suspension or expulsion. Such action by a school district requires more formal procedures which are described in the section entitled "Long-term Suspension or Expulsion of a Handicapped Student." Prior to suspending a handicapped student, the school shall afford to the handicapped student the same rights as an nonhandicapped student. These are: the right to be given oral or written notice of the charges against him or her; the right to be informed of the evidence to support the charge; the right to respond to the charges. Further, the student, if appropriate, and the parent/guardian shall be given a written notice of the suspen-
sion which shall identify the misbehavior, the length of the suspension, and any relevant condition(s) associated with the suspension. This written notice may be issued following the suspension of the student.

Suspension is not a change in the educational status of the student. Therefore, an individualized educational planning committee meeting is not required. It is suggested that a meeting be held prior to suspension if possible, otherwise as soon as possible after the suspension. The meeting participants should include: an administrator, the person who observed the misbehavior, the student's teacher, the student's parent(s)/guardian and, if appropriate, the student. It is suggested that one of the meeting participants be a person knowledgeable about the student's handicapping condition.

The meeting participants should discuss the misbehavior and determine if suspension would be/was an effective means of helping the student deal with the misbehavior. Following this discussion, the meeting participants may decide to have an IEPC meeting to review the student's individualized education program.

Handicapped students who have been placed in an appropriate program in the least restrictive environment may be suspended for violations of reasonable school policies. Michigan State Board of Education (1984) and Michigan Department of Education (1986) noted the following:
1. Prior to suspension, the administration must determine that the student's conduct is not a manifestation of the handicap, and the student is appropriately placed. If there are any questions about either of these conditions, a new IEPC meeting should be convened prior to suspension. The student may remain in school (including in-school suspension if necessary) pending the findings of the IEPC, unless the student cannot safely be contained within the school setting.

2. Where there is no question about the appropriateness of placement or the student's ability to manage his or her behavior, a handicapped student may be suspended. The "General Provision for Suspension" and "Due Process Procedures" shall then apply. (Michigan Department of Education Position Statement: Suspension and Expulsion of Handicapped Students, 1986, pp. 4-6; and Proposed State Board of Education Policy on Due Process Procedures for Suspension and Expulsion, 1984, p. 3)

General Provision for Expulsion

The following conditions apply to expulsion:

1. The student must be found guilty by the administration of "gross misdemeanor" or "persistent disobedience" before recommending expulsion. These terms should be defined in written board policy. The administration determines that other administrative actions are inappropriate and that the student's behavior justified expulsion.

2. An evaluation of the records should be made to determine if there is any evidence that the student may be handicapped, the procedures in "Expulsion of Students Suspected of Being Handicapped" must be followed. If the IEP determines the student is not handicapped, expulsion proceedings may continue.

3. The parent must be given written notice if the administration's intent is to recommend expulsion. The notice should include:
a. the charge and evidence of the charge;

b. the time and place of the board meeting to consider expulsion;

c. the length of time the administration is recommending the student be denied enrollment (semester, year, permanently);

d. a brief description of the hearing procedure (who will conduct it, how it will be conducted, etc.);

e. a statement of the student's rights, including the right to be represented by the parent or counsel, the right to give testimony, present evidence and otherwise provide a defense; and

f. a statement of the right to request the attendance of school personnel who are party to the incident or who have accused the student of violating school policy or rule.

4. Expulsion must be by formal action of the Board of Education. The board may meet in closed session to consider expulsion when the student, student's parents, or guardian request a closed hearing.

a. The board must act to expel in public session with a quorum present.

b. The expulsion must be by formal motion and confirmed by vote or procedures established by the board for formally approving action.

c. The action must appear in the minutes and be part of the public record.

5. Notice of expulsion should be sent to the juvenile division of the Probate Court for students age 6 through 15. The court should be informed that the board has expelled the student, provided the reason for the expulsion, and requested the court to review the case to assure that the student is placed in an educational program in accordance with the state mandatory school atten-
dance law. Notice may be sent to the juvenile division of the Probate Court for students ages 16 and 17 where the district believes that the court should review the circumstances surrounding the expulsion. This is suggested when the record indicates that the expulsion could have been avoided with appropriate parental supervision, medical or psychiatric treatment. The school districts may provide a copy of the public record to the court, but should not make any judgment or recommendation about the need for medical or psychiatric treatment or foster home placement.

6. Where the board rules in favor of the student, the student shall be reinstated immediately. The student shall be allowed to return to school without prejudice or penalty unless otherwise directed in the motion of the board. (Michigan State Board of Education, 1984, pp. 4-5)

Expulsion of Students Suspected of Being Handicapped

The board may not expel a student who is suspected of being handicapped. If there is evidence to believe that a student is suspected of being handicapped, the administration must do the following:

1. Immediately evaluate the student or contract to have the student evaluated.

2. If the parent refuses permission to have the student evaluated, the district should immediately convene a hearing under Rule 340.1721(2) of the Michigan Administrative Code to determine if there is cause to suspect that a handicap exists.

   (a) If the hearing officer determines there is not cause, the expulsion proceedings may continue as described in "General Provision for Expulsion."

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(b) If there is cause, the hearing officer shall order an evaluation and an IEP shall be convened to determine eligibility for special education.

3. Convene an IEP to review the evaluation and determine eligibility under R 340.1721(b) of the Michigan Administrative Code.

(a) If not eligible, the district may proceed with expulsion as prescribed in "General Provision for Expulsion."

(b) If eligible for special education programs and services, the student shall be placed immediately in appropriate programs and services.

(c) If a student is found not eligible but the parents request a special education hearing, the district must schedule the hearing.

(i) The district cannot proceed with expulsion until the special education hearing and any appeal to the hearing is completed.

(ii) The student can remain suspended for up to 10 days without service. Where the IEP and related hearings extend beyond that time, it is recommended that the district provide alternative instruction (in-school suspension, home instruction, or with a parent's permission, placement in an alternative education setting).

(d) If the hearing officer determines that the student is eligible for special education programs and services, the student shall be placed immediately and the expulsion procedure shall stop. If it is determined that the student is not eligible, the district may proceed with expulsion as prescribed in "General Provision for Expulsion." (Proposed State Board of Education Policy on Due Process Procedures on Suspension and Expulsion, 1984, pp.4-6)
Long-Term Suspension or Expulsion of a Handicapped Special Education Student

As stated previously in the position statement, a student may receive a long-term suspension or be expelled for "gross misdemeanor" or "persistent disobedience," which should be defined in written board policy. The school district is advised to adhere to the procedures which follow before taking this action.

1. Convening the Individualized Educational Planning Committee Meeting

Prior to long-term suspension of expulsion of a handicapped student or a special education eligible student, an IEPC must be held because this is a possible change of educational status for the student. The IEPC does not recommend long-term suspension or expulsion. The role of the IEPC is: (a) to decide if the student has been appropriately determined eligible for special education; (b) to verify that the misbehavior is or is not a manifestation of the handicap, and (c) to decide if the student is placed in appropriate special education programs and services in the least restrictive environment. Once convened, the IEPC should:

(a) Identify the misbehavior.

(b) Ask the following questions to assist in the determination of whether or not the misbehavior is a manifestation of the student's handicap:

(i) Was the student told of the school's policy regulating the inappropriate behavior?
(ii) Is it reasonable to believe the student understood the school's regulations given the student's handicapping condition?

(iii) Given the handicapping condition and given the student understood, is it reasonable to believe the student could control his or her behavior in the context in which it occurred?

(iv) Is it reasonable to believe that the program and services, the method of delivery, or the environment in which they were delivered did not precipitate the inappropriate behavior?

2. Implications of Individualized Educational Planning Committee Decisions

(a) If the individualized educational planning committee determines that the student's eligibility for special education requires change (student was inappropriately placed), the change must be documented in the IEP and the IEP possibly revised to meet the student's needs. The long-term suspension/expulsion procedures are stopped.

(b) If the individualized educational planning committee finds that the student's behavior is a manifestation of the handicap (the student cannot reasonably be held accountable for the behavior because of the handicap), the individualized educational planning committee shall review and possibly revise the student's individualized educational program. The long-term suspension/expulsion procedures are stopped. The student must be placed in an appropriate program.

(c) If the IEPC finds the student's IEP does not currently reflect the special education program and services needed to meet the unique educational needs of the student, the student's IEP must be revised and the long-term suspension/expulsion procedures stopped.
(d) If the IEPC determines that the behavior is not a manifestation of the handicap, the student's eligibility has been appropriately determined, and the current programs and/or services are appropriate for the student, this information is included in the written individualized education program report and sent to the appropriate school official. The committee must report on the appropriateness of the student's present educational placement and verify that the student could reasonably be expected to act appropriately given the student's disability and the circumstance that resulted in the request for the expulsion. It is important to note that the IEPC does not recommend expulsion. This decision is the responsibility of the board of education under Section 1311 of the School Code (1976). Unless the parent or school district appeals the IEPC decision (see "e" which follows), the board or its designee may issue a long-term suspension to the student using the same procedures the board would follow when expelling a non-handicapped student. See "General Provision for Expulsion."

(e) If either party (the school district or parent) requests a hearing to contest the decision of the IEP, the district must schedule a special education due process hearing and follow the rule established for this activity.

(i) The board cannot proceed with the expulsion until the hearing and any appeals are completed.

(ii) The student can remain suspended for 10 days without service. When the IEPC and related services extend beyond that time, it is recommended that the district provide alternative instruction (in-school suspension, home instruction, parent's permission, placement in an alternative education setting). It is important to note that the student has the right to attend school during these procedures and to be provided with programs and ser-
vices consistent with the last uncon-
tested individualized education pro-
gram unless grounds for an emergency
removal exist during the pendency of
this proceeding.

(iii) If the hearing officer rules that the
student is inappropriately determined
eligible, inappropriately placed, or
finds that the behavior was a manifesta-
tion of the student's handicap, the
student cannot receive a long-term
suspension or be expelled. If the stu-
dent is found to be appropriately deter-
mined eligible for special education,
appropriately placed, and the behavior
is not a manifestation of the stu-
dent's handicap, and assuming the school
district or the parent does not appeal
the hearing officer's decision to the
state, the board or its designee may
issue a long-term suspension to the
student or the board may proceed with
the expulsion using the same proce-
dures the board would follow when
expelling a non-handicapped student.
See "General Provision for Expulsion"
for providing notice and scheduling the
expulsion before the board of education.
(Michigan Department of Education, 1984,
pp. 6-7)

Implications of Long-Term Suspension or Expulsion Board
Action

If the board decides not to expel the student, the
student shall be reinstated immediately. The student shall
be allowed to return to school without prejudice or penalty
unless otherwise directed in the motion of the board
(reassignment to another building, etc.). If the school
board expels a handicapped student or a handicapped stu-
dent receives a long-term suspension from the board or
its designee, the district must assure that there is not a complete cessation of educational services. After expulsion, the district must follow up and help the student find another educational placement. This can include referral of students 6 through 15 to juvenile court or helping students find alternative educational placements in adult education, mental health services or programs. An IEPC must be convened to identify the educational service(s) to be provided to the expelled student.

Expulsion must be by formal action of the board of education. The board may meet in closed session to consider expulsion when the student, student's parents, or guardian request a closed hearing.

1. The board must act to expel in public session with a quorum present.

2. The expulsion must be by formal motion and confirmed by vote or procedures established by the board before formally approving action.

3. The action must appear in the minutes and be part of the public record.

Emergency Suspension/Removal

Emergency suspension is not considered a change in educational status and, therefore, and IEPC is not required. Minimally, the student, if appropriate, and the parent or legal guardian should be informed of the sus-
pension and provided the following information in writing:
an identification of the misbehavior, the length of the
suspension and any relevant condition(s) associated with
the suspension. The parent should be encouraged to visit
with school personnel to discuss the student's behavior.

The length of suspension must be in relationship to
the severity of the offense and should not exceed 10 days.
A student may only be suspended once for any episode of
inappropriate behavior. When the suspension period is
over, the student has the right to return to the activity/
school from which he or she was suspended.

Emergency removal is a protective procedure to be
used by school officials whenever the student's action(s)
poses a threat to himself or herself, other students,
school personnel, or school property. The student may be
removed on an emergency basis for only as long as it takes
to make arrangements to resolve the threat to safety.
School officials shall immediately consider whether there
is a need to expeditiously arrange for an individualized
educational planning committee meeting to review the
student's individualized educational program and consider
revisions necessary to meet the student's educational needs.
Emergency removal cannot be used as a substitute for dis­
ciplinary procedures for suspension and expulsion or to
avoid time lines or protections provided for long-term
suspension or expulsion.
The IEPC has no authority to suspend nor can its
decision delay or cease the act of suspension by a school
district. Its purpose is to review the IEP, in light of
the student's inappropriate behavior, to see if the cur-
rent eligibility and programs/services are appropriate
for the student and if not, to revise the IEP. (Proposed
State Board of Education Policy on Due Process Procedures
for Suspension and Expulsion, 1984, p. 6-7; and Michigan
Department of Education Position Statement: Suspension
and Expulsion of Handicapped Students, 1986, pp. 6-10).

Summary

Many of the due process procedures described under
the different subheadings in this chapter, were very
similar in content. Consequently, the researcher's
intent was to provide the reader with clear, concise
procedures to follow in each circumstance.

P.L. 94-142 (EAHCA) of 1975, Section 504 of the Re-
habilitation Act of 1973, and its accompanying regulations
have helped to shed light on the question of suspension
and expulsion. Neither the acts nor its accompanying
regulations indicate how handicapped student is to be dis-
ciplined. It was concluded that handicapped students may
be suspended/expelled from school for disciplinary mis-
behavior(s) under proper circumstances utilizing correct
due process procedural safeguards (the minimum described in *Goss v. Lopez*). Handicapped students are clearly not exempt from the school's disciplinary procedures. These students are entitled to the same procedural safeguards as non-handicapped students, as well as the procedural safeguards outlined in P.L. 94-142 and Section 504. Handicapped students have a double standard concerning disciplinary suspension/expulsion. These students and their parents have been afforded greater procedural safeguards than the non-handicapped students (i.e., concerning suspension/expulsion).

The right to a free appropriate public education (FAPE) guarantees a handicapped student the right to educational services at all times in the least restrictive environment, including those times during a suspension of more than 10 days (expulsion). A school district may however, use its normal disciplinary procedures for handicapped students in case of emergency suspension, but may not use serial emergency suspension resulting in a denial of educational services. Additional safeguards or more formal procedures are required for expulsion (i.e., a formal hearing) before the school board; the board must act to expel in public session with a quorum present; the expulsion must be by formal motion and confirmed by vote or procedures established by the board for formally ap-
proving action; and the action must appear in the minutes (board of education written agenda) and be part of the public record etc. During disciplinary proceedings the handicapped child is entitled to remain in current educational placement (e.g., the placement the child was enrolled in before the disciplinary proceeding). Furthermore, all decisions made regarding the discipline of handicapped students beyond emergency suspension must be made by a knowledgeable group of people (multidisciplinary team) selected in accordance with P.L. 94-142.

The multidisciplinary team must make the determination of cause of misconduct and appropriate placement. Legally, before a handicapped student can be removed from school (in cases other than emergency suspension/removal), the multidisciplinary team must first determine whether the student's misconduct bears a relationship to his or her handicapping condition. If it is determined that the handicapped student's behavior is related to his or her handicap, he or she cannot be suspended or expelled from school regardless of his or her misconduct. He or she can only be moved to a more restrictive environment with consideration given to all alternative placements on the continuum. If a student's behavior is not related to his or her handicap, he or she can be suspended under the district's normal disciplinary procedures for a period of time
that does not exceed the maximum allowed by the state, generally 10 days. The removal of "a handicapped" student from school for more than 10 days constitutes a change in placement which must be effectuated in accordance with procedures outlined in P.L. 94-142 and Section 504. If a handicapped student is expelled, there cannot be a complete cessation of educational programs and services if he or she falls within the state mandatory ranges for special education.

Chapter IV (The Historical Content) reviews relevant litigation and court cases specifically related to suspension and expulsion of handicapped pupils. The chapter should guide educators, parents and advocates to revise their school disciplinary policy; to clarify the relationship between disciplinary problems and handicapped students educational placement; and to inform educators of their need to provide alternatives to suspension and expulsion for handicapped students.
CHAPTER IV

THE HISTORICAL CONTENT

Historically, before the passage of Education for All Handicapped Children Act (P.L. 94-142) of 1975 and the Rehabilitation Act (Section 504) of 1973 handicapped students had no rights or legal protection in the public schools. Adamson (1984) stated prior to the passage of these legislations, many behaviorally disordered mentally retarded, learning disabled, and other handicapped adolescents left school prior to graduation. While data on the incidence of handicapped dropouts or "pushouts" before the passage of P.L. 94-142 are hard to come by, the relative paucity of secondary programs for handicapped adolescents prior to the passage of these legislations may have contributed to these adolescents leaving school early. (p. 112)

Litigations and Court Decisions

The two influential court cases of great importance in the passage of the Rehabilitation Act (1973) and Education for All Handicapped Children Act (1975) were Mills v. Board of Education of the District of Columbia (1972) and the Pennsylvania Association for Retarded Children (PARC) v. Commonwealth Pennsylvania (1972). Both of these cases,
decided in 1972, offer guidelines to other courts, legislatures, parents, educators, and to advocates for handicapped children in their efforts to guarantee the rights to an education. Dunn (1975) stated the following pertaining to PARC:


In January, 1971, the Pennsylvania Association for Retarded Children (PARC) brought a class action suit against the Commonwealth of Pennsylvania for the failure to provide all retarded children access to a free public education. It was estimated that at the time of filing of the suit, about 50,000 mentally retarded children were excluded from any education in the state school system. The plaintiffs included fourteen mentally retarded children of school age, representing themselves and "all others similarly situated," i.e., all other retarded children in the state. The defendants (referred to below as state education officials) included the State Secretaries of Education and Public Welfare, the State Board of Education, and thirteen school districts, representing all school districts in the state. The PARC suit specifically questioned public policy as expressed by state statutes, namely the policies and practices which excluded postponed, or denied free access to public education to school age mentally retarded children. The court dramatically brought this problem to the public's attention with its decision that mentally retarded children have a right to an education suited to their needs.

The law of Pennsylvania prior to the education in PARC was used to exclude retarded children from programs of education and training in the public schools. As a result of the PARC proceedings, those in charge of public education in the state (the defendants) agreed to a re-
interpretation of the statutes satisfactory to those representing mentally retarded children. (pp. 11-13)

Mills v. Board of Education of the District of Columbia (1972) was mandated under court order. However, PARC (1972) was achieved by consent agreement (an agreement made by the parties, not an order by the judge). PARC provided for the right of all handicapped children to a publicly supported educational program. Mills, on the other hand, welcome precedent for the claim that an estimated one million children across the country are totally excluded from public schools because of various handicaps are being deprived of their various constitutional rights. Dunn (1975) summarized Mills as the following:

Mills v. Board of Education of the District of Columbia (1972)

Mills was a class action brought by seven plaintiffs against several defendants including members of the District of Columbia Board of Education, members of the Special Education Department of the D.C. Board of Education, and members of the Mills plaintiffs alleged in their complaint that on the basis of them having various physical and mental disorders, they were excluded from education programs in the District of Columbia. To support this contention, the plaintiffs introduced evidence that an estimated 22,000 retarded, emotionally disturbed, blind, deaf, and speech or learning disabled children within the city, perhaps as many as 18,000 of these children were not furnished with programs of specialized education. Plaintiffs went on to prove that in a 1971 report to the
Department of Health, Education and Welfare the District of Columbia Public Schools admitted that an estimated 12,340 handicapped children were not to be served in the 1971-72 school year. On behalf of all the children who had been excluded or deprived access to publicly support education, the plaintiffs challenged their exclusion, and the procedures and practices which the District of Columbia education and social services officials had denied children their public education.

Judge Waddy concluded that:

"No child eligible for a publicly support education in the District of Columbia public schools shall be excluded from a regular public school assignment by a rule, policy, or practice of the Board of Education of District of Columbia or its agents unless such child is provided (a) adequate alternative educational services suited to the child's needs, which may include special education or tuition grants, and (b) a constitutionally adequate prior hearing and periodic review of the child's status, progress, and the adequacy of any educational alternative." The decision became known as Waddy Decree. The section stated by Judge Waddy echoes PARC opinion discussed earlier in its recognition of the right of every child to an adequate education suited to her/his needs. In addition, the section recognizes the children in terms of hearings to determine the need for special education and for the review of the efficacy of whatever special education arrangements have been made. Judge Waddy, by basing his decision in this case on constitutional grounds, eliminated the concept of uneducability; he declared the rights of children to a suitable education regardless of the degree of the child's deviation from the norm, and ordered such education regardless of the fiscal impact on the school system. (pp. 16-18)

It is worth noting that both these cases preceded pertinent federal legislation in advocacy for handicapped children. The Rehabilitation Act of 1973
(Section 504) and the Education for All Handicapped Children Act of 1975 followed these cases, as Congress addressed the needs of handicapped children.

**Goss v. Lopez (1975)**

One of the first landmark court cases that outlined the guidelines for suspension of students (handicapped and non-handicapped) was **Goss v. Lopez**, (1975). This was a very important Supreme Court case. Thomas (1985) indicated that the Court stated the right to a public education is a protected property interest that may not be withdrawn without minimum due process of the law. According to the Court, brief suspension (up to ten days) do not require a formal hearing, but do require an informal conference to guard against the possibility of unfair, mistaken, or arbitrary decisions. During this conference, the student must be informed of the basis for the allegations and be allowed the right to rebut the evidence. The student may be suspended immediately, without an informal hearing, only when he or she is in danger to himself/herself or to others, or when he or she causes a substantial disruption of the school environment. However, even where such circumstances exist, the student must be provided an informal hearing as soon after his or her removal if possible. (Thomas, 1985 pp. 44-45)
Goss v. Lopez in its landmark decision recognized the great importance of education for handicapped children in the scheme of American society. Flygare (1981) found two legal issues tend to surface whenever a special education student is disciplined, particularly when punishment is suspension or expulsion. The first is whether the punishment is a "change in educational placement" requiring a new individualized educational plan (IEP) and the other elaborate procedural safeguards mandated by Section 504 of the Rehabilitation Act of 1973 and the Education for All Handicapped Children Act of 1975. The second issue is whether the student is being punished for misconduct that is a manifestation of his or her handicap. Most states, in administering P.L. 94-142, have taken the position that special education students cannot be punished for misconduct related to their handicap. The court cases that follow emphasize the two legal issues stated by Flygare (1981).

Donnie R. v. Wood (1977)

Since 1975, numerous court cases have appeared in litigation concerning suspension and expulsion of handicapped students. One of the first court cases involving suspension of handicapped students was Donnie R. v. Wood (1977). In the case of Donnie R. v. Wood, a
13 year old handicapped student was suspended from school for disciplinary reasons. The plaintiff argued that the school's action was discriminatory because the student's behavior was related to his handicapping condition. The court required the district to evaluate the student and to place the student in an appropriate education program.

(Reference Manual for Suspension and Expulsion, 1984, p. 10)

**Stuart v. Nappi (1978)**

The first case to interpret the ways in which P.L. 94-142 affects school disciplinary practices was Stuart v. Nappi, (1978). Kathy Stuart a third-year high school student with a history of behavioral and learning difficulties, was evaluated by the school's planning and placement team (PPT) in Danbury, Connecticut. The PPT diagnosed the child as "learning disabled," requiring placement in a special program. A psychological evaluation was recommended but not administered. Three months later, the PPT reported that she had made progress but continued to suffer from her handicap. The team recommended a psychological evaluation that was finally completed eight months later. The psychological evaluation recommended continued placement in the special education program and noted that the plaintiff's disabilities caused her frustration and humiliation at this point in her adolescence. Five months after the evalu-
ation, she stopped attending classes. Her teacher requested that the PPT meet to determine whether Kathy's primary handicap was emotional rather than a learning disability. The PPT never met and the program was not changed.

The following school year, Kathy was assigned to a learning disabilities program. Her attendance went from poor to complete nonattendance. She began to wander through the halls and became involved in incidents that resulted in disciplinary conferences. She became involved in a schoolwide disturbance with other students. She was given a 10-day disciplinary suspension and was scheduled to appear at a disciplinary hearing. The School superintendent recommended to the board that Kathy be expelled for the remainder of the school year. Prior to the hearing, Kathy's parents submitted, as provided by law, a written request for a special education hearing to review her placement. In addition, the parents asked that the school system be enjoined from conducting a hearing to expel the student.

The court enjoined the school system from conducting the disciplinary hearing. In addition, the court acknowledged this as a case of first impression. That is, no court had, under similar circumstances, discussed the rights of students under P.L. 94-142 in the context of a
school system's disciplinary procedures. (Hockstaff, 1983, pp. 14-15)

The injunction was granted, and the court's reasons for granting it are critical for understanding why the power to suspend or expel has been limited. Lichtenstein (1980) noted the court listed four rights established by P.L. 94-142 with respect of suspension and expulsion:

1. The right to an "appropriate public education;"
2. the right to remain in her present placement until resolution of her special education complaint;
3. the right to an education in the "least restrictive environment;" and
4. the right to have all changes of placement effectuated in accordance with prescribed procedures. (459-460)

These rights, the court held, would be violated if Stuart was expelled. Her case indicated that there would probably be an unreasonable delay between the time expulsion became effective and implementation of an alternate program. However, even if there were no delay, some injury would probably result. Assuming that some type of program would continue to be offered, the options were severely limited; either homebound instruction or private placement. The latter was not controlled by the district and admission could not be guaranteed. A strong likelihood existed that an appropriate placement could not be found; even if found, it would probably cost more than the district's average per-pupil expenditure. Homebound
instruction, therefore, was likely to be the recommended program. The two alternatives, homebound instruction and private placement, ran counter to the "least restrictive environment" to which Stuart was entitled, i.e., the right "to be educated with non-handicapped children whenever possible. (Lichtenstein, 1980, p. 460)

The U.S. District Court judge in Stuart v. Nappi found that the defendant school district had failed to provide Kathy with the individualized educational program recommended by its own placement and planning team. Further, the school did not adequately respond to Kathy's failure to participate in the special education program it had provided. The judge, suggested that the school's handling of the pupil's educational program may have contributed to her problems and ordered that the school conduct an immediate review of her special education program. The Court also ruled that expulsion prior to the resolution of the plaintiff's special education complaint would violate P.L. 94-142 which requires that a pupil remain in his or her current placement until resolution of a special education complaint (term most often used is "stay put" or "pendency").

Lichtenstein (1980) stated Stuart's right to remain in her current placement until the complaint was resolved was central to the expulsion question, because
the court considered expulsion's net effect to be a change of placement. The prescribed procedures for a change include parent notification and the opportunity for appeal and a hearing of the charge is not agreed to by the parent. Thus, once the complaint has been made by the parent, there is no indication that state schools should be permitted to expel a handicapped child while a special education complaint is pending. (Leone, 1985, p. 114)


In a similar suit filed in U.S. District Court in Texas, Howard S. v. Friendswood Independent School District, the parents of a high school student with severe learning disabilities and emotional problems sought injunctive relief to assure that their son received an appropriate education. The plaintiff was enrolled in and SLD (severely learning disabled) program. The school district had provided special education services to the student in junior high school but did not provide these services in high school. The plaintiff disciplinary problems were first noted when he entered high school. School officials failed to notify the Special Education Department of discipline problems. After the student encountered disciplinary problems in high school, his
parents sent him to a medical facility for evaluation and temporary treatment. Soon after beginning treatment by a psychiatrist, the student attempted suicide and was hospitalized for several weeks. While the student was being evaluated, the school district (without notifying the parents) decided that he had moved and subsequently expelled him. The parents' request for reimbursement for the private placement was denied by school officials who claimed that the student was no longer enrolled. In providing relief to the plaintiff and his parents, the following was noted by the court:

1. The school district failed to provide the student a free appropriate education, and this failure was the contributing cause of the student's severe emotional difficulties.

2. The dismissal resulted in a constructive expulsion which occurred without notice to the parents and without a hearing of any kind, and in clear violation of the school district's obligation under P.L. 94-142.

3. The school district must evaluate the student's present level of performance, develop an IEP and provide for appropriate educational services for student.

4. The school district must reimburse the parents for the cost of their son's private schooling from the date of expulsion. (Florida State Department of Education, 1981, p. 6 & Leone, 1985, p. 114)

Sherry v. New York State Education Department (1979)

The line between expulsion and suspension is not always clear cut. In Sherry v. New York State Education
Department, Deloween Sherry, a fourteen-year old, blind-deaf child, suffering from brain damage and an emotional disorder rendering her self-abusive, was enrolled in the State School for the Blind in Batavia, New York. As a result of injuries from her self-abusive behavior, she was hospitalized for medical treatment. Ten days later, her mother received a letter from the superintendent of Deloween's school stating that the school did not have sufficient staff to supervise her and that her return to the program would be impossible until her condition changed, or more staff were hired. He added that without a better student-to-staff ratio, the school could not provide the degree of supervision required to prevent Deloween from seriously hurting herself. A week later, in a meeting attended by school officials, psychologists and Deloween's mother, the superintendent inserted that if Mrs. Sherry insisted on returning her daughter to the School for the Blind, then the school would suspend her and a suspension hearing could be provided. In the meantime, Deloween's district of residence provided a temporary program to "assist Mrs. Sherry with Deloween's behavior." Shortly thereafter, the district's Committee on the Handicapped concluded that the most appropriate program available was at the School for the Blind and recommended Deloween's return on a day-only basis.
Two weeks later, Mrs. Sherry requested that her daughter be reinstated, and the School for the Blind suspended her "it appeared to be in Deloween's and the school's best interest to do so." (Hockstaff, 1983, p. 17)

Mrs. Sherry filed for injunctive and declaratory relief, seeking reinstatement. Shortly thereafter, the superintendent advised Mrs. Sherry that additional supervisory personnel had been authorized and the suspension would be evoked. Faced with a question of mootness, the court went with the assumption of likelihood that the act complained of will be repeated. While the court affirmed the school's right to suspend --on an emergency basis-- a handicapped student who is a danger to herself, the superintendent's letter suspending Deloween for an indefinite period constituted a change in placement, requiring procedural safeguards under P.L. 94-142.

The plaintiff in Sherry v. New York sought a declaratory judgment that her daughter's suspension was in violation of Section 504. The school district argued that, because the suspension was not solely by reason of her handicap, it was not an unlawful suspension. The court was quick to assert that a district is required to provide an appropriate education to all children regardless of the nature or severity of the child's handicap. Citing Health Education and Welfare (HEW) regulations
that require "related aids and services" designed to meet the needs of the handicapped persons, the court ruled that the district was bound to provide adequate supervisory staff, thereby indicating that the suspension resulted from a failure of the School for the Blind to provide necessary related services. In short, the court found the indefinite suspension was an unlawful exclusion within the meaning of Section 504. The handicapped student was entitled to all of the procedural safeguards under the regulations of P.L. 94-142, including an impartial due process hearing regarding the change in placement. (Hockstaff, 1983, pp. 16-18)

Mattie T. v. Holladay (1979)

In Mattie T. v. Holladay, 1979, a case heard in Northern District of Mississippi, Emergency exclusion of handicapped students is permitted so long as due process is followed. Specific guidelines were established. Emergency conditions exist when:

- The child's behavior represents an immediate physical danger to him/herself or others or constitutes a clear emergency within the school such that removal from school is essential. Such removal shall be for no more than three days and shall trigger a formal comprehensive review of the child's IEP. If there is disagreement as to the appropriate placement of the child, the child's parents shall be notified in writing of their right to a Sp. Ed. (Special Education) impartial due process hearing. Serial three-day removal from SPED are prohibited. (Grosensick et al., 1981, p. 17)
In summary, there would appear to be current judicial support for (1) determining that any non-emergency exclusion of handicapped students violates "a free appropriate public education" (FAPE); (2) the fact that it is difficult and/or unnecessary to determine if the behavior is related to handicap (if a child is handicapped then #1 applies, regardless of a relationship or lack of it to the handicap); and, (3) emergency exclusion of handicapped students is permitted under stringent conditions. (Groesenick et al., 1981, pp. 16-17)

Mrs. A. J. v. Special School District No. 1 (1979)

In this case, an eighth grade student had been suspended for 15 days following a fight with another student. She had been given an informal hearing prior to the first of the three consecutive 5-day suspensions. During the suspension, she was evaluated to determine whether she was handicapped, but because a responsible placement committee had not as yet determined if a handicapping condition existed, the court ruled that the district was not required to follow the Education for All Handicapped Children Act (P.L. 94-142) of 1975 procedures.

However, the student prevailed under the state law. Thomas (1985) noted Minnesota statues permitted three consecutive
5-day suspensions, an informal hearing was required prior to each suspension. Because the school provided only one informal hearing prior to the first suspension, the entire suspension was held to be unpermissible and all references to it in the school records was to be expunged. (p. 46)

Although this case did not technically involve a handicapped student, it still identified an important issue: Could a handicapped student be suspended for 15 days if a Goss hearing was conducted? Given the handicapped student's statutory right to an appropriate program, it is not recommended that suspension be longer than 10 days. When a student is withdrawn from his/her IEP for longer periods, even if alternative education is made available, most courts would view such an action as an expulsion. Because expulsion is a change of placement an appropriate hearing would be required. (Thomas, 1985, pp. 45-46)

Doe v. Koger (1979)

In Doe v. Koger, a mildly mentally retarded student in Indiana was suspended for more than 10 days for disciplinary reasons and later was suspended for the remainder of the year. The expulsion was for a period of nearly six months. After the student was expelled, an attorney
for the handicapped student request a special education placement hearing. The U.S. District Court judge in Northern Indiana made the following determination:

1. Using placement procedures required by the Education for All Handicapped Children Act (P.L. 94-142), the school must determine whether a child's disruptive behavior is related to his or her handicap and whether the student is appropriately placed.

2. Schools are prohibited under P.L. 94-142 for expelling students whose behavior is related to their handicapping condition.

3. Disruptive students cannot be suspended indefinitely, but only until a more appropriate and restrictive placement is found.

4. Appropriately placed handicapped children can be expelled in the same manner as other children. (Leone, 1985, p. 115)

The court noted that the EAHCA does not prohibit all expulsions of disruptive handicapped children. It only prohibits the expulsion of handicapped children who are disruptive because of their handicap. The distinction between a handicapped child and any other is that, unlike any other disruptive child, before a disruptive child can be expelled, it must be determined whether the handicap is the cause of the child's disruptiveness. In this case, the school district was found to have violated the due process provisions of EAHCA when it expelled the student without
first determining whether his propensity to disrupt was the result of his inappropriate placement. Thus, *Doe v. Koger* set the precedent for the "cause of misconduct" determination and affirmed that P.L. 94-142 procedures must be used to make this determination.

**P-1 v. Shedd (1980)**

In the case of *P-1 v. Shedd*, the Connecticut Court ruled that a child who has been referred for evaluation and identified as being in need of special education may not be suspended for more than 10 days. The court did indicate that a handicapped student could be suspended if the student was providing an ongoing threat or danger to self or others was substantially disruptive to the educational process. ([Reference Manual for Suspension and Expulsion, 1984, p. 10](#))

**Stanley v. School Administrative Unit No. 40 for Milford (1980)**

*Stanley v. School Administrative Unit No. 40 for Milford* is another case dealing with suspension of a handicapped adolescent. This is a case in which the school principal dealt with a very common disciplinary problem. Christian Stanley was a 15 year old tenth grade student in New Hampshire who was classified as learning disabled. Between October and December 1979,
he was suspended six times—once for use of profanity, and the rest for failure to come to detention. Adamson (1984) noted prior to the last of these suspensions, the school board held a hearing and suspended Christian for 21 days "for neglect or refusal to conform to the reasonable rules" of the high school and ordered a re-evaluation by the Planning and Placement Team (PPT) as soon as possible. (p. 92) The Stanleys brought suit seeking an injunction from this suspension, alleging that the boy's rights as outlined in the Education for All Handicapped Children Act (1975), Section 504, and the 14th Amendment to the constitution were being denied. Adopting the standards set forth in Doe v. Koger the court found that Christian's disruptive behavior (profanity, excessive tardiness, wandering the halls) was the result of serious family problems at home beginning about the time his disruptions began and was not "caused to any substantial degree by his handicap or by his current placement program." Therefore, the suspension of this handicapped student was upheld. However, citing Goss v. Lopez, the court ordered that the suspension be terminated after 10 days. (Adamson, 1984, p. 92)


John Blue was a 16-year old student who was classified as emotionally disturbed and enrolled in a resource
program in his local high school. On December 18, 1980, John was involved in an altercation with his biology teacher. Biology was one of his "mainstreamed" classes, which he had failed in the first quarter. John was immediately suspended by the school principal, and provision was made for homebound instruction between the end of the suspension period and a planned expulsion hearing before the board of education in January 28, 1981.

On January 8, the Planning and Placement team (PPT) met and recommended placement either at a more restrictive alternative center, or continuance in homebound instruction as the most appropriate educational program. Counsel for the Blues asked for a preliminary injunction restraining the board of education from conducting any expulsion hearing and to direct reinstatement into his special education program. The court granted this injunction citing the right to remain in one's current placement until due process proceedings are resolved; that expulsion is not a legal means to change the placement of a handicapped student; and that handicapped students have the right to an education in the least restrictive environment. The court also directed that he be "reinstated into his presuspension special education placement or some other educational program chosen by agreement of the parties during the pendency. (Adamson, 1984, p. 90)
S-1 v. Turlington (1981)

Most of the concepts described to this point (i.e., on the cases stated prior to this one) were brought before the Fifth Circuit Court of Appeals. S-1 v. Turlington is particularly important because it was the first federal appellate to review the issue of discipline and the handicapped student. The case was appealed to the Supreme Court which denied a petition for certiorari (proceeding in which a higher court reviews a decision of an inferior court). Nine students, all of whom were classified as educable or mildly mentally retarded, were involved in a variety of serious problems ranging from masturbation, sexual acts against other students, willful defiance of authority, insubordination, vandalism, and the use of profane language.

All nine students were expelled from Clewiston High School, Hendry County, Florida for the remainder of the 1977/78 school year and the entire 1978/79 school year (the maximum expulsion under Florida law). The district court found a denial of rights of handicapped children, and entered a preliminary injunction against the state and local school officials. In upholding the ruling of the district court, the circuit court confirmed or clarified the following concepts related to the expulsion of handicapped students:
1. "A determination that a handicapped student knew the difference between right and wrong is not tantamount to a determination that his misconduct was or was not a manifestation of his handicap. Neither can the relationship between a handicapped and disruptive behavior be based upon the generalization that the student is not classified as "seriously emotionally disturbed." Also, this determination cannot be made by school officials, but rather by the "specialized and knowledgeable group of persons" described in the Handicapped Act Regulations.

2. Citing the Stuart case, they agreed that expulsion is a change in educational placement and as such, invokes the procedural safeguards of the Handicapped Act.

3. "Expulsion is a proper disciplinary tool under the Handicapped Act and Section 504, but a complete cessation of educational services is not."

4. The burden of determining whether a student's misconduct is a manifestation of the student's handicap is on the state and local officials not on the student.

5. Even if a handicapped student voluntarily withdraws from school or agrees to a placement in advance, he or she is entitled to a due process provisions of the Handicapped Act. (Adamson, 1984, pp. 90-91)

The important differences between the ruling in S-1 v. Turlington and the earlier decisions (i.e., court cases cited in this paper) was that a handicapped student can be expelled if the behavior is not caused by the handicap, but there can be no complete cessation of all educational services.

Kaelin was a federal district court case decided by the Sixth Circuit. This case involved the suspension of a ninth grade boy who had been identified as Educable Mentally Handicapped since kindergarten. The student was suspended following a dispute with a male teacher in which the student had refused to complete assignment work, destroyed one of the teacher's worksheets and his coffee cup, and in attempting to leave the classroom, pushed, kicked, and hit the teacher. The following day the student was suspended. A hearing regarding the suspension was held by the school board which did not convene nor consult the Administrative Admissions and Release Committee (AARC), a multi-disciplined group which, in Kentucky, is the organization responsible for reviewing challenged placement decisions. In addition the board did not address the relationship, if any, between the child's handicap and his disruptive behavior. Expulsion followed. The child, through his parents, then sought legal help in the federal courts.

The U.S. Court of Appeals, Sixth Circuit, affirmed a U.S. District Court decision which held that an expulsion from school is a "change of placement" within the meaning of Education for All Handicapped Children Act (1975) thus requiring certain procedural protections prior to
expulsion (e.g., a due process hearing). The Court of Appeals also determined that an expulsion must be accompanied by a determination as to whether the handicapped student's misconduct bears a relationship to his handicap. The court enjoined the school district and required that all records concerning the student's expulsion be expunged. (Data Research, Inc., 1986, pp. 81-82)

Kaelin served to reaffirm and based the courts arguments on the earlier decision of Stuart v. Nappi, Doe v. Koger, and S-l v. Turlington. The decision echoed S-l in stating that even if the behavior was not caused by the handicapping condition, there could not be a complete cessation of services for an expelled handicapped student.


This is an Illinois case where a 17 year old "learning disabled" child (a high school junior) was found to have made a seriously abusive verbal remark ("I'm not serving your fucking detention. Fuck you!") to a teacher and was suspended for five days. (Data Research, Inc., 1986, p. 79) The boy had been receiving resource special education for several years as a learning disabled student. The remark was made in his "mainstreamed" auto mechanics class that day for acting with others to disrupt the class. His parents contested the suspension and he was given a hearing at
which an impartial hearing officer found that his act was not perpetuated by his handicap, and upheld the suspension.

An appeal was made to the state superintendent of education on the theory that the suspension violated federal law in that it was made without regard to his handicapped status, nor was it proved that the student was dangerous. The state superintendent agreed with the parents. In an appeal by the local school board against the state school board, the federal district court reversed the decision of the state superintendent and reinstated the decision of the hearing officer, writing:

It is vividly apparent that there was no expulsion from, or termination of, special education here, but rather a five-day disciplinary interruption for a flagrant offense, which was reasonably calculated to teach the "child," who obviously knew better, in an effort to avoid repetition and a consequent necessity for more drastic penalties.

Any theory that some harm of the brief interruption of classroom work could outweigh the educational value of the suspension here can only be recognized as pure imagination, or a feeble attempt at rationalization of a preconceived notion that handicapped students, whatever the degree of handicap, are free of classroom discipline. This is not the law. (Adamson, 1984, pp. 92-93)

The court stated that if the 17-year old had managed to complete 11 years of education and had advanced to the point where he was placed in a mainstream educational
course, it was nonsense that his shameful outburst was somehow the fault of the system. The child knew or should have known, that his behavior was unacceptable. Further, the court pointed out to the U.S. Supreme Court decision on Goss v. Lopez, which held that "suspension is considered not only to be necessary tool to maintain order but a valuable education device." (Michigan Department of Education, 1984, p. 3) The court concluded by noting that a five-day suspension should not be equated to expulsion or termination, and that federal law permits the enforcement of ordinary classroom discipline through such suspensions. (Data Research, Inc., 1987, pp. 100-101)


Deist was a Nebraska Supreme Court case involving a 14-year old male student diagnosed as autistic, mentally retarded, and epileptic. Deist was exhibiting increasingly destructive and disruptive behavior was sent home with a note stating that he should not return to school until his behavior had altered. The student was being suspended from the school (for trainable mentally retarded) for his disruptive behavior. No due process hearing was provided, meanwhile all instruction ceased for approximately one and one-half months. Presumably, when the conditional suspension lasted longer
than 10 days, it became an expulsion. After the expulsion, the student was placed in a regional institution by his parents. While in the institution, many of the skills previously learned were lost, but the school district made no attempt to relocate the student.

The Nebraska Supreme Court held that the expulsion of Deist violated the EAHCA. Accordingly, the child was ruled to have had his placement changed without due process and to have been denied FAPE (free appropriate public education). The Supreme Court upheld the hearing officer decision that required the district to (1) reimburse the parents expenses incurred in the private placement, and (2) provide residential group-home type of educational setting. However, the court did not uphold the part of the decision that granted FAPE to the plaintiff beyond his twenty-first birthday. Valuable points cited in Adams were:

1. The expulsion constituted a change in placement which was subject to the procedural protection of the EAHCA.

2. Local school officials are prohibited from expelling students whose handicaps are the cause for their disruptive behavior.

3. The school's only course of action in such circumstances (student misconduct/disciplinary behavior is caused by the student's handicap) is to transfer the disruptive student to an appropriate more restrictive environment. (Data Research, Inc., 1987, p. 103; Thomas, 1985, p. 47)

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Lamont X. was a case brought on behalf of two Severely Behaviorally Handicapped, (SBH), students of the Hamilton, Ohio School District. Both students lived at the Children's Home of Butler County and attended SBH class in a regular school building. Both boys had displayed uncontrollable temper outbursts and destructive behavior.

Both boys were suspended a few days after school started in the 1984-85 school year. They were suspended for their violent classroom behavior. The school district gave the boys homebound tutoring instead of allowing them to return to school. The plaintiffs moved for a preliminary injunction which would allow them to return to the classroom. The court concluded that:

1. The long-term removal of the plaintiffs from the classroom and provision of home-based tutoring constituted a change in placement within the meaning of the Education for All Handicapped Children Act of 1975.

2. The plaintiffs have shown that they are entitled to injunction relief by, demonstrating that they have been subjected to a change in placement which was not approved by their guardians and has not yet been vindicated by administrative mechanisms.

3. Injunctive relief is allowed because the possibility of future violence caused by the plaintiff's return to the classroom was not sufficient to outweigh the irreparable harm to the plaintiffs' which would be caused by continued exclusion from the classroom.
4. An injunction would be issued allowing the plaintiff to return to the classroom.

The court ordered the school district and the children's home to confer with an eye toward reaching a mutually agreeable compromise which would fulfill the terms or the EAHCA and serve the needs of all those involved. In the absence of that alternative, the Court said it would be constrained to order the plaintiffs' return to the classroom. *Lamont X. v. Quisenberry*, 606 F. Supp. 809 (S.D. Ohio 1984)


_Victoria L._ was a mildly handicapped learning disabled student who filed a suit claiming that her transfer from a regular high school to the Alternative Learning Center (ALC), a school for discipline and disinterested students, violated her rights under P.L. 94-142, the Fourteenth Amendment, and Section 504. The record indicated that _Victoria_ committed many breaches of school discipline such as smoking, skipping classes, and insubordination. She also brought a razor blade and martial arts weapon to school and threatened to injure or kill another student. The school authorities transferred _Victoria_ to the ALC because they felt her behavior posed a threat to both students and the school officials.
Victoria claimed that the school did not have the authority to change her placement without going through all administrative hearings and court appeals. The claim was based on "stay put" or pendency" provision of P.L. 94-142.

The federal appellate court decision in the case ruled in favor of the school district. All of the evidence presented led the court to believe that Victoria's behavior was a threat to students and school officials and the transfer was appropriate and warranted. Victoria L. v. District School Board of Lee County Florida, 741 F. 2d 369 (1984)


In October 1979, due to excessive truancy and following a series of trouble making incidents, John K. an educational handicapped high school student, was suspended from public school without consultation or notice to his parents. Over the next six months, John spent his time in juvenile hall and other residential facilities but during this time, the school district made no new assessment nor developed any new individualized education program (IEP) for John.

In January of 1979 discussions were held between the parents and the school district to determine possi-
ble placements for John. The parents indicated they wanted John placed at a private residential facility. The court, however, placed the obligation on the parents to pay for the private school placement.

In April of 1979 the parents and school district met to develop an IEP for John and agreed on John's placement at the private facility, however, the district only agreed to pay for the "educational costs" involved in his placement.

A hearing held at the parents request found that the district was not responsible for paying because of the parents unilateral action in placing their son. A state administrative hearing panel reversed and held the district was responsible for paying. The district sought review in Superior Court which reversed the decision of the administrative hearing based on new evidence. The parents appealed.

On appeal the court held that it was proper for the lower court to have applied an independent judgment standard of review. The review procedures under the Education for All Handicapped Children Act of 1975 allow a court to hear "additional evidence" which contemplates that there is to be a new, independent decision made upon appeal.

The parents were entitled to reimbursement for the private placement expenses because the district
failed to fulfill its obligation to provide an appropriate public education for John K. Despite knowing John's status the district failed to undertake diagnostic reassessment and placement processes.

Parents are usually required to "stay put" and refrain from taking any unilateral action in placing their child in an educational program. However, the parents' violation of the "stay put" requirements were justified by the district's inaction in providing John K. with an appropriate public education. The district, therefore, is obligated to reimburse the parents for the cost of the private placement. Unilateral action by the parents is not justified, however, by a later agreement with the district which adopts the parents' action. Lapointe v. John K. (California Court of Appeals, 1st Dist., Div. 1, 1985)

School Board of Prince County v. Malone (1985)

Jerry Malone was a 14-year old Virginia boy, with a serious learning disability. The student was suspended from school in 1983. The boy had acted as a middleman for two non-handicapped girls who desired to buy "speed" from another student. He made no money doing this and took no drugs himself. The boy was suspended, but during his suspension the school district's committee
on the handicapped held proceedings which culminated in the determination that the boy's handicap was not the cause of his involvement with drugs. The school board then voted to expel the boy for the remainder of the school year. One month later, the parents requested and received a due process hearing pursuant to the EAHCA at which the hearing examiner ordered the expulsion reversed because he found that the boy's misbehavior was related to his learning disability. A state review officer affirmed this decision.

The school board then filed suit in U.S. District Court contending that in situations like this, the EAHCA allows expulsions without review. The district court dismissed the school board complaint and the U.S. Court of Appeals, Fourth Circuit Court, affirmed with the review officer. The Appeals Court noted that it is a settled law that any expulsion of a handicapped student is a "change in placement" for EAHCA purposes, triggering the act's procedural safeguards. Also, the district court's determination that the boy's involvement in drug sales was caused by his handicap would not be overturned on appeal unless it was "clearly erroneous." The dismissal of the school board's complaint was, therefore, affirmed. (Data Research, Inc., 1987, p. 98)
Jackson v. Franklin County School Board (1985 & 86)

Jackson was a Mississippi case, that involved the legal issue of the "stay put" provision of P.L. 94-142. The student's sexual misconduct prevented his return to the classroom. Jackson was a special education student (behaviorally handicapped) who unbuttoned a girl's blouse and touched her breast while in his special education class. As a result, the school suspended him for three days and he was sent before the County Youth Court. This was the boy's third instance of school-related sexual misconduct. The Youth Court sent him to the state hospital for one month of treatment. After he lived at home for seven months following his hospitalization, the boy's mother sought to re-enroll him at his school under his former IEP program. However, school officials claimed that the old IEP was unapplicable in light of the boy's continuing sexual misconduct and proposed that he be placed in a closely supervised group home.

The boy's mother then brought suit in U.S. District Court seeking a preliminary injunction to compel school officials to allow her son to attend class under his former IEP. The court ruled in favor of the school district, noting that in order to grant a preliminary injunction, there must be an immediate threat of irrepar-
able harm to the plaintiff. However, in the case the boy's mother had delayed for seven months before seeking to once again enroll her son in the school. Also, school officials had evidenced a genuine concern for the boy's welfare by offering to provide home tutoring during the time in which a new appropriate IEP could be formulated. The court held that because the boy had neither a current IEP nor a current educational placement, and because of the danger that he presented to others, there were sufficient grounds to order that he should not return to the classroom.

On appeal by the boy's mother, the U.S. Court of Appeals, Fifth Circuit, affirmed the district court, holding that when a handicapped student presents a substantial danger to himself or others, immediate removal from the classroom may be justified. Jackson v. Franklin County Board, 765 F. 2d 535 (5th Cir. 1985) & (Data Research, Inc., 1987, pp. 99-100)

The boy and his mother appealed again to the Court of Appeals. They argued that the district was wrong in not finding that the boy's due process rights were violated by being excluded from school during the spring of 1984 and the first two months of the 1984/85 school year.

The Court of Appeals held that when the school failed to convene an IEP conference in the spring of 1984 it
violated the EAHCA. The EAHCA specifically required that "written prior notice to the parents or guardian be provided whenever a school proposes to initiate or change...the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child." (Data Research, Inc., 1987, p. 100) The court observed that the U.S. Supreme Court has held that even a short suspension of up to 10 days required notice of charges and some type of informal hearing. It stated that a failure on the part of the school to follow the procedural requirements of the EAHCA amounted to failure by the school to provide a free appropriate education for the boy. The court concluded that, under the EAHCA, the burden rested on the school or agency to safeguard handicapped children's rights by informing the parents or guardians of those rights. It also noted that the writers of the EAHCA intended that students and parents should participate as much as possible in outlining the educational program of the handicapped. Both the EAHCA and the Fourteenth Amendment required the school to provide the boy with notice and a hearing regarding his continued exclusion from school.

The case was remanded to the district court to determine the extent of the boy's loss caused by the school's failure to provide notice and a hearing in April.
and August, 1984. The court of Appeals also instructed the district court to determine what damages, either monetary or in remedial educational services, would be appropriate for the boy.

The court decided in favor of the school district. A determination was made not to allow an injunction that would make the school district place Jackson back in the high school according to the IEP prior to his treatment. The court stated that any harm suffered by Jackson would be outweighed by his presence in school interfering with the provision of effective educational services to other students. Also, the court noted that if Jackson would accept one of the educational services offered by the district his education would not be interrupted and he would be ready to continue his education followed resolution of permanent placement. Jackson v. Franklin County School Board, 806 F. 2d (5th Cir. 1986) & (Data Research Inc., 1987, pp. 99-100)

Doe v. Maher (1986)

The complaint in the Doe v. Maher case was brought on behalf of two emotionally disturbed students. Doe and Smith, who were suspended and scheduled for expulsion in November, 1980. The suspensions and later recommendations for expulsion were precipitated by assault-
and aggressive behaviors by both students. District court suits were filed when the counsels for the students requests for cancellation of the expulsion proceedings and convening of the IEP team were ignored by the school district.

The suit was brought against the San Francisco Unified School District and the California Superintendent of Education of behalf of the two emotionally handicapped students, John Doe and Jack Smith. One student, known as John Doe, was discharged from a state mental hospital, an individualized education plan (IEP) was prepared for him by the district and he was admitted to a regular school. Upon admission, he assaulted another student and broke a school window and was suspended for five days. The principal informed his mother and their attorney that he was recommending expulsion. Before the expulsion proceedings were completed, the mother sued since the school district ignored requests made by Doe's attorney to halt the expulsion proceedings. The suspension were continued indefinitely during pendency of expulsion proceedings.

The second student, Jack Smith, was admitted to a regular school on a half-time basis after he became disruptive while enrolled full time. He engaged in repeated acts of theft, extortion, and sexual advances to a
female student and was suspended. He was eventually placed in a private school. No recommendation was made for expulsion.

The two students jointly commenced a lawsuit in U.S. District Court contesting both the extended suspensions and the reduction to a half-day program. The claim against the state department of education and superintendent of education was based on their alleged failure to establish a policy regarding discipline of handicapped students and to monitor compliance by the local district.

The district court held against both the state and local district and issued an injunction preventing the expulsion of any handicapped student for misbehavior which is a manifestation of the student's handicap, as well as many other related orders. Both appealed to the 9th circuit Court of Appeals. The U.S. Court of Appeals, Ninth Circuit agreed that even if a student's misbehavior is not handicap-related, any expulsion attempt based on such misbehavior would be a change in placement triggering the EAHCA's procedural safeguards. While the child's placement may be changed because he poses a danger to himself or others, that change may not be initiated without compliance with the full panoply of procedural requirements in the EAHCA. The court ruled that under
the so called "stay put" provision of the EAHCA, the child must remain in the current placement until the completion of the review proceedings. The court also directed the state to develop guidelines and to provide services directly to the handicapped children which the district has failed to serve. However, it ruled that a school district could, pursuant to California law, suspend a handicapped student for as long as thirty days without creating a "change" in placement.

The court of appeals also held that (a) a school district could make numerous changes in a child's educational program without triggering the EAHCA's procedural mechanisms, (b) the district court's order that an IEP team must meet within five days if an expulsion proposal was not required by the EAHCA, the district court's order that IEP decisions must be made by majority rule was similarly unwarranted, and (c) "the decision to reduce the second child's program to half-days" required full EAHCA procedural safeguards. After making the above modifications, the court of appeals affirmed the lower court's rulings in Doe v. Maher. (Data Research, Inc., 1988, pp. 497-498; & Data Research, Inc., 1987, pp. 97-98)
Honig v. Doe (1988)

In February, 1987, the U.S. Supreme Court agreed to review the case, Doe v. Maher, 1986, which was renamed Honig v. Doe (No. 86-728). The Supreme Court stated that it would review only the following two questions: (1) whether the status quo provision of the EAHCA prevents a local school district from immediately changing the placement of a handicapped child whose handicap related misbehavior presents a danger to him or herself or others, and (2) whether a state education department must provide services directly to each individual handicapped child to whom a local school district has failed to discharge its responsibilities under EAHCA.

Honig v. Doe concerned two emotionally disturbed youths who were suspended indefinitely by a California school district in 1980 for violent and disruptive conduct related to their disabilities. One of the students, John Doe, was a 17-year old who had difficulty controlling his impulses and anger, choked a classmate and kicked out a school window while being escorted to the principal's office. The other student, Jack Smith, was involved in stealing, extorting money from classmates, and making lewd comments to other students.

Initially, each of the students was suspended for five days. When school officials recommended expulsion,
the suspension were extended indefinitely until the expulsion proceedings were completed.

Bruin (1988), noted that the U.S. Supreme Court agreed with the 9th Circuit Court of Appeals and the district court on both the issue of the "stay put" provision and the issue relating to the duty of the state to provide services directly in the Honig v. Doe case (previously named Doe v. Maher). The Supreme Court ruled the following:

School officials may not act unilaterally to expel handicapped students for disruptive conduct, even when the student actions are violent. The decision imposes strict procedural limitations on changing the placement of a special education student. The Supreme Court ruled that changing a handicapped student's placement without first exhausting due process procedures violates the "stay put" clause of the Education for All Handicapped Children Act. That clause states that a child must remain in his or her educational placement until review proceedings are complete.

The language of the "stay put" requirement is unequivocal, Justice Brennan wrote. The child must remain in his or her current educational placement during the pendency of any EAHCA proceedings unless school authorities and the parents agree to another placement. School do not have unilateral authority to exclude disabled students from school. Removal of such students may be accomplished only with permission of the parents or, as a last resort, the courts. Thus, interim placements may be made where the parents and school officials are able to agree on one.

This conclusion does not leave educators hamstrung, the court continued. The school
may use normal techniques for dealing with children who are endangering themselves, such as study carrels, timeouts, detention, or the restriction of privileges. More drastically, where a student poses an immediate threat to the safety of others, the students may be temporarily suspended for up to 10 days. Under Department of Education policies, a suspension of up to 10 days does not amount to a change in placement prohibited by the "stay put" requirement. Finally, EAHCA does not prohibit school officials from requesting a court to issue an injunction temporarily enjoining a dangerous disabled child from attending school.

These procedures, the Court concluded, not only ensure that school administrators can protect the safety of others by promptly removing the most dangerous students, but also provide a cooling down period during which officials can initiate an IEP review and persuade the parents to agree to an interim placement. Justices Scalia and O'Connor dissented from the majority, arguing the case was moot because one of the students is now 24 years old. (Bruin, 1988, p. 15)

Summary

The past decade had witnessed a drastic change and expansion of rights offered handicapped students. P.L. 94-142 and Section 504 has guaranteed student services and protections that may not be limited by school officials without proper precautions. P.L. 94-142 and Section 504 came into being from two federal district court cases. The two court cases were Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania (1972) and Mills v. Board of Education.
of the District of Columbia (1972). PARC stated that the Commonwealth of Pennsylvania may not deny and mentally retarded child access to a free public program of education and training. The Mills case further set forth the basic framework of law which later became incorporated into P.L. 94-142. Mills summation was:

1. no child shall be excluded from school unless such child is provided "adequate alternative education services suited to the child's needs;"

2. no suspension of more than two days without a hearing;

3. the school board shall utilize public or private agencies to evaluate the educational needs of all exceptional children;

4. the school board must file a comprehensive plan which provides for the identification, assessment, and placement of class members, such shall "describe the curriculum, educational objectives, teacher qualifications, and ancillary services for the publicly supported educational programs to be provided to class member;" and

5. the judge provided for an impartial hearing process and the conditions and procedures necessary to such hearing.

Mills and Parc were of significant importance and was later used by Congress in establishing due process procedural safeguards in Section 504 and P.L. 94-142.
Goss v. Lopez (1975) was discussed as a landmark Supreme Court decision that set the basis for due process for suspension and expulsion of any student from school.

Finally, twenty-two court cases related to suspension and expulsion of handicapped students were reviewed (i.e., after Mills, PARC, and Goss). These cases were selected because they were cited by a vast number of authors, Adamson (1984), Data Research, Inc. (1986, 1987, 1988), Florida State Department of Education (1981), Hockstaff (1983), Leone (1985) & Lichstenstein (1985) as being significant decisions on suspension and expulsion of handicapped students.

The determinations and rulings in all twenty-five cases were knowledgeable and at times contradictory. However, the twenty-five cases discussed previously support the following:

1. Suspensions are not considered change in placement, unless the suspension exceeds 10 days.

2. Handicapped students are not immune from school disciplinary process for suspension and expulsion.

3. Handicapped students can be suspended on an emergency basis (usually 10 days or less) when they endanger themselves or others or significantly disrupt the educational environment of others.
4. Handicapped students whose misconduct is caused by their handicap cannot be suspended or expelled, (no matter how severe their conduct may be) other than on an emergency basis, and the school district must seek an alternative or more restrictive placement.

5. If a handicapped student's misconduct is determined by and IEPC not to be caused by the handicap, the student may be suspended or expelled under normal disciplinary procedures with the exceptions that parents or guardians must be given notice of their procedural rights under P.L. 94-142 (e.g., P.L. 94-142 change of placement procedures for expulsion which stress there cannot be a complete cessation of education).

6. During pendency of an administrative appeal hearing or judicial review a handicapped student must be allowed to "stay put" within the current placement unless the parent/guardian, school district or court agree otherwise.

7. A comprehensive evaluation is required by P.L. 94-142 before having any significant changes in placement or services recommended or changed by the local school district.

8. The multidisciplinary team determines if the handicap student misbehavior is a manifestation of the handicap condition not the local school district. This
team also determines if the student placement is appropriate.

9. Handicapped students have the right not to be totally expelled or excluded from all educational services as a result of behavior that is a manifestation of their handicap (there cannot be a complete cessation of services).

10. Expulsion (removal from school more than 10 days) is a change in educational placement and requires the procedural safeguards in P.L. 94-142 be followed.

11. All students (handicapped and non-handicapped) are entitled to the minimum due process procedural safeguards outlined in Goss v. Lopez.

12. Handicapped students have the right to a free appropriate public education in the least restrictive environment.

13. Two main issues that generally appear in most suspension and expulsion court cases concerning handicapped students are: (1) whether the misbehavior is related to the handicapping condition, (2) whether the punishment for the misbehavior is a "change in educational placement" requiring a new individualized educational plan (IEP) and the other elaborate procedural safeguards mandated by Section 504 and P.L. 94-142 of 1975. (Flygare, 1981, p. 669)
The twenty-five cases reviewed are instructive; they can guide the review of school disciplinary policy; help clarify the relationship between disciplinary problems and handicapped conditions; and assist educators in taking preventive measures to ensure that handicapped children infrequently violate school policy. From a legal standpoint, these decisions, may be persuasive but are not binding on other courts.

While litigation and court decisions provide general guidelines in regard to disciplinary policy and handicapped students, they provide little directions to educators attempting to accommodate the needs of handicapped students attending their schools. Educators, (local, intermediate, and state school officials) parents, and advocates need to become more actively involved in developing less punitive disciplinary policies, and alternatives to suspension and expulsion for handicapped students.

Clearly, schools need to acknowledge and deal with disciplinary problems of handicapped students in an even-handed manner (fairly and in good faith). The proceeding chapter describes various alternatives to suspension and expulsion educators may utilize to better accommodate the needs of handicapped students attending school.
CHAPTER V

ALTERNATIVES TO SUSPENSION AND EXPULSION

Overview

This chapter provides the rationale for developing alternatives; statistics on suspension/expulsion; alternatives educators may utilize instead of suspension and expulsion; and remediation strategies that may be used with handicappers. These alternatives and remediation strategies are needed to better accommodate and meet the needs of handicappers and state and federal laws.

Rationale for Developing Alternatives

School officials are responsible for maintaining an environment for students that is both safe and conducive to learning. In fulfilling this responsibility, it is necessary to establish, promulgate, and uniformly enforce reasonable rules and regulations. Such rules are assumed to be established in good faith and to be necessary to meet the objectives of the school. Furthermore, the right of educators to regulate student behavior is similar to that held by parents when dealing with their own children. As a matter of degree, teachers act in loco parentis (in place of the parent), but do
not have absolute control of students. Students are "persons" under the constitution and "do not shed their rights at the school house door," accordingly, students have equal protection and due process rights, among others. (Thomas, 1985, p. 44)

Nevertheless, where students violate school rules, it may be necessary to discipline them. School officials often employ suspension an expulsion for handicapped and non-handicapped students who violate school rules. The practice of suspension and expulsion is an attempt to maintain in-school control of handicapped students. Educators are being forced to give up precious instructional time in order to handle discipline problems which are increasing at an alarming rate. Consequently, this leads the disciplinarian to suspend and expel the disruptive students. Rarely do these procedures (suspension and expulsion) even change the behavior of the students. (Barnette & Parker, 1982) Suspension and expulsion procedures need to be questioned.

Today, millions of children are being suspended and expelled from school for disciplinary reasons. Despite all ill-advised messages that schools don't matter, either academically or psychologically, those who visit schools regularly, or better, work in them, should know that they can be redemptive for children. Children's op-
opportunities for growth and problem solving are better if they are in school. No one can foresee the range of opportunities that can come from associations within a school. For example, opportunities that come from people with academic, athletic, dramatic or political events can make a difference for a child; personal contact with someone can be valuable. But suspension and expulsion from school destroy all of these opportunities.

Some of the major reasons for children being suspended and expelled from school are truancy, tardiness, fighting, usually with other students or educators; there are also the familiar behavior problems such as acting out, having a "bad" attitude, cursing, needing a "cooling off period," as well as smoking and destruction of property. Also, suspension and expulsion involve cases of drugs, alcohol, dress codes, and weapons. Radar, Snyder, Goldstein, & Rosenwald (1980) stated suspension is an admission of failure, an admission there is not solution within the school setting for changing the behavior of troublesome students. Furthermore, suspension not only fails to contribute to changing a student's behavior but may, in fact, encourage his or her acting out: A suspended student is relieved of academic responsibility and is "free" -- free to cause problems in the neighborhood and/or turn to drugs and alcohol. In
addition, the opportunity for diagnosing the student's problems is lessened and parents' responsibilities diminished through suspension (p. 19). Kauffman (1981) agreed with Radar et al. (1980) and concluded schools that suspend or expel students for serious acts of misbehavior, contribute to students' behavior problems. Exclusion from school becomes a nefarious contingency of reinforcement; that is how schools reward serious violations of the disciplinary code by excluding students who dislike school and who are unsuccessful. Brodinsky (1980) indicated suspension and expulsion should be viewed as the school's admission of its inability to adequately serve its students' needs.

Learning should be the central purpose of the school. (Hess, Martin, Beck, Parker, & Lagoe, 1979) When students are interested and involved in learning, the need for discipline diminishes (Arsulick, 1979). The school systems need to develop procedures to identify and remedy root problem, and to help develop the student's self-discipline (Mitzell, 1978). Few school systems have discontinued the practices of suspending and expelling handicapped students. Neither procedure have been shown to be effective. Mitzell (1978) stated the following concerning the reluctance to reduce suspension and expulsions:
...should be recognized as defacto admission by school officials that they are unwilling to successfully initiate the kinds of preventive instructional, organizational, and management strategies which will minimize the manifestation of inappropriate behavior by students (p. 7).

Arsulich (1979) noted increased inappropriate behavior is common response to punishment (i.e., suspension and expulsion). Before expending further energy and expense on punitive measures) school systems need to examine some central questions:

1. Is it possible to separate a particular behavior from the handicapping condition (Barnette & Parker, 1982, pp. 173-179)?

2. Does the disproportionate number of minority students suspended and expelled indicate a possible social problem (Bickel & Qualls, 1979, p. 7)?

3. Do the punitive procedures of suspension and expulsion effect positive behavioral changes in handicapped students (Barnette & Parker, 1982, pp. 173-179)?

Along with this critical examination of punitive measures, it is recommended that school systems recognize the need for (a) structure in the classroom (Hess et al., 1979); (b) extensive recognition of positive behaviors by students (Arsulich, 1979); and (c) for special classes within the school for short-term treatment of severe discipline problems (Arsulich, 1979). More positive and constructive means of dealing with the inappropriate behaviors of handicapped students need to be
developed to replace the ineffective and questionable procedures of suspension and expulsion. The section labeled alternatives in this chapter provides various supportive and constructive ways to deal with the misbehaviors of handicapped students.

Statistics on Suspension and Expulsion

Very little statistics are available on the frequency of suspension and expulsion of handicapped pupils. However, the Office of Civil Rights data in the Children's Defense Fund's 1975 report, School Suspensions: Are They Helping Children?, suggest that suspensions (a) are not a deterrent to misbehavior, (b) are used disproportionately with black, poor, and male students, and (c) are often imposed arbitrarily. (Children's Defense Fund, 1975, p. 11)

Cottle (1975) noted some very significant findings pertaining to school suspension:

Secondary school students, as one might expect, are suspended twice as often as other children from 12 to 17 years of age surveyed by the Children's Defense Fund and reported in their Children Out of School in America, almost eight percent of students between 12 and 17 had been suspended at least once. Black children are suspended from school three times as often as white children and for longer periods of time. The Office of Research reports that in New York where school enrollment is 64 percent minority, 86 percent of the suspensions are minority children.

The statistics are almost the same when one compares poor children (children whose families
receive some sort of public assistance such as aid to dependent children) with more affluent children (those whose families do not receive public assistance). In one Macon, Georgia, census tract, 47 percent of the children came from families with female heads of household, but 71 percent of the suspensions were children from those families. And in one Davenport, Iowa, census tract, 29 percent of the children came from families with female heads of household, while 71 percent of the reported suspensions in that census tract were from those families.

The major reason for suspending a child from school is that (it is hoped) the consideration of the child's case will bring the parents of the child into suspension deliberations and into the school. It's the reinstatement hearing, coupled with the seriousness of the punishment, that is supposed to help the child. But according to the Children's Defense Fund survey, 33 percent of suspended children are returned to school without their parents being involved in the reinstatement hearing. As a method of helping children, therefore, suspension hardly seems productive. Irrespective of the reinstatement process, moreover, suspensions often bring about a pattern of exclusion that leads to the termination of formal education. (p. 5)

Alternatives

In an effort to assure that handicapped students are not unfairly suspended or expelled, the administrator or disciplinarian must make certain that all alternatives to suspension are considered. Various constructive alternatives, preventive measures, and remedial strategies are cited in the remainder of this chapter.
Reviewing and Revising the Discipline Code

Leone (1985) indicated in recent review of state policies on suspension and expulsion reported that most of the 26 states responding to their survey (i.e., on suspension and expulsion) did not have specific procedures for suspension and expulsion of handicapped pupils. Their survey and the cases previously discussed suggest that the school systems need to review their disciplinary codes to determine whether they accommodate the unique needs of the handicapped adolescents/children attending public schools.

Administrators, parents, and teachers need to know the following prior to reviewing and modifying their schools' disciplinary policy. As Leone (1985) suggested:

1. It is essential to have a good grasp of substantive and procedural right granted to handicapped students and their parents. They should be familiar with P.L. 94-142 requirements.

2. Know the issues they are grappling with, suspension and expulsion procedures (i.e., review court cases, litigation, and the major thrust of the decisions).

3. Teams of administrators, parents, and teachers should also recognize that accommodating the needs of handicapped adolescents/children within a disciplinary code is in line with the fairness intent of Goss v. Lopez (1975), and the mandates of P.L. 94-142.
4. Finally, a committee reviewing and modifying the disciplinary code may want to develop a series of questions or decision points to guide their deliberation. (p. 117)

Establishing the Relationship Between Misbehavior and Handicapping Condition

Establishing the relationship between misbehavior and handicapping condition is a difficult and imprecise task. The process involves systematic review of a particular child's behavior, deliberation, and professional judgment. Courts in a number of court cases previously reviewed required that those "knowledgeable" must decide whether a relationship exists between the misbehavior and a handicapping condition. The following are procedures used to clarify relationship between the misbehavior and student's handicapping condition:

1. A review should involve an examination of file documents, including the child's response to previous disciplinary action, and discussion with the child's current and previous teachers. Trends and patterns provide useful information: some examples are: a) little or no academic growth and accompanying behavioral problems may suggest a relationship between misbehavior and a handicapping condition; b) a pattern of misbehavior that indicates a lack of judgment and deficient social skills overtime may also suggest a relationship between misconduct and a handicapping condition; and c) serious acts of misbehavior, atypical for a particular child, and unaccompanied by changes in placement or academic progress, may suggest no relationship between a specific child's handicap and misbehavior.
2. A discussion of the behavior with the child may provide additional information that can be used in making a decision. Acts defined as malicious or revengeful by school officials may be misdirected attention behaviors exhibited by youngsters with poor developed social skills.

3. Finally, the behavior and academic performance of each and every handicapped child being considered for suspension or expulsion should be reviewed independently. Educators should resist making unilateral decisions on the basis of a child's disability or handicapping label. When it is determined that a relationship between a child's handicapping condition and misbehavior exists, an IEP meeting should be convened to examine the appropriateness of the current placement and to review progress. (Leone, 1985, p. 119)

Direct Instructions

Preventing disciplinary problems is not as difficult as it may sound. Handicapped children according to Carnine and Silbert (1979) are instructionally naive. That is, they don't readily retain newly presented information, they are easily distracted, and easily confused. The instructional naivete of many mildly to moderately handicapped children demand that special educators provide high quality, appropriate, and properly paced instruction to each pupil. Failure to provide appropriate instruction frustrates pupils and set the stage for misbehavior. Handicap students may misbehave when they don't understand or have the prerequisite skills
for the instructions being provided. Similarly pupils may misbehave when they are being reintroduced to work they have already mastered.

Extra Curriculum Activities

Participation in sports, clubs, and special events may help prevent disciplinary problems. Students involved in special activities may encounter success or a sense of belongingness that they don't experience in the classroom. These students are less likely to act out. Sometimes restrictions from participation in school activities will be placed on handicapped students (i.e., in order to discourage inappropriate behaviors).

Providing appropriate instruction to handicapped pupils and getting them involved in school activities will not eliminate all discipline problems. However, appropriate instruction and greater involvement in school activities are steps that may reduce frequency and severity of problems that occur. Special education instructors can work with content with regular classroom teachers to help them develop monitoring systems for handicapped pupils integrated into their classrooms. (Leone, 1985, pp. 119-120)
Self-Monitoring Skills

Students may be taught self-monitoring skills to assist them in monitoring their own behavior. Some self-monitoring skills are: classroom routines and movement patterns; time management and time on task techniques, individual/group recording, graphing and charting (i.e., daily progress); peer tutoring/modeling; video taping; and self-correction and group correction procedures. These skills will help increase student instructional time (time working on tasks) and decrease students time off-task (i.e., engaging in off-task activities). (Paine, et al., 1983)

Counseling and Counseling Centers

Individual, group, or family counseling may be necessary to help a handicapped student remedy problems leading to inappropriate behaviors. Counseling may be provided by a special education teacher, school psychologist, school guidance counselor or the community counselors. The need and plan for counseling should be included as part of the student's IEP. Students who consequently exhibit inappropriate behavior may be placed in a counseling program. The counseling they receive by individual, group, peer, or family is a preventive
measure. However, as a disciplinary measure, students may be sent to a counseling center to discuss their inappropriate behavior, what they should have done instead and why, develop coping strategies for the future, practice the appropriate behavior, etc. Counselors may also assign consequences for the misbehavior, or direct the student to a school administrator for that purpose.

Counselors may also serve as liaison between teachers, administrators, students, and the family. The counseling staff could also conduct a variety of assessments or make referrals for additional or different educational and related services. A potential problem with using only a counseling center for dealing with discipline is that students come to perceive it in a negative light. It may also reduce the effectiveness of the counseling—preventive measurers, and/or serve to confuse the child about the purpose and role of the counselors. (Grosenick & Huntze, 1984, pp. 86-87)

After School Detention and Saturday School Detention

After school detention and Saturday school detention may be held in the cafeteria, gym, or specified area large enough to comfortably house the students. Some general rules are: (a) students may not talk, (b) students must be working at all times, (c) students must
stay seated, (d) students will be required to have paper and pencil, (e) students are to remain in the room for the entire period, and (f) extra days will be ordered if any of the rules are broken and if the student skips detention. The room is generally supervised by regular school staff on a regular basis. The idea is to keep the student in school after school hours as a consequence of the misbehavior in school. Hopefully, this will teach the student to behave appropriately. However, one major problem is that students come to view education and time spent in school as a punishment. (Grosenick, 1985, p. 86)

**Behavioral Management Procedures**

Behavioral contracts for appropriate school behavior could be developed and agreed to by the student, school representative(s) and family members. Specific expectations would be listed and consequences (positive and negative) would be predetermined for compliance or non-compliance with the contract. Person responsible for implementing and monitoring the contract would be denoted, as well as conditions and date for termination of the contract. The contract could be part of the special education programs overall, motivation system, or it could be singularly designed for a student who is experiencing difficulty in one area. (Grosenick & Huntz, 1984, p. 87)
**In-School Suspension**

In-school suspension occurs when a student is removed from his current class (or classes) and is placed in an isolated (or more restrictive) environment. The student is not permitted to leave school during school hours or to remain at home. During the sanction, he/she still would receive instruction and be assigned work. However, such one-on-one interaction may not necessarily represent better instruction; in practice, students are kept busy and are closely supervised, but seldom do educators have the personnel, resources, or desire to use the suspension period for identifying and meeting individual needs.

When in-school suspensions are used to discipline non-handicapped students, no constitutional or statutory infraction is likely, because no property or liberty right has been denied. The student still has access to a public education, but because of his/her inappropriate behavior, has been removed from the mainstream and has had his/her mobility restricted. Acts of school officials that are not arbitrary, malicious or capricious, and that are performed in good faith and in the best interest of the school, are unlikely to be disallowed.

Notwithstanding the general authority of school officials to make student assignments and as a matter
of degree, to restrict student behavior, educators still are limited in their use of in-school suspensions when handicapped students are involved. To use in-school suspension as a routine punishment in disciplining handicapped students for non-emergency, minor infractions appears incompatible with the intent of federal statute, particularly if the reassignment were to exceed the Goss limit. Where an in-school suspension is warranted, it is recommended that it last no longer than ten days -- the maximum permitted for an out-of-school suspension. Excessive use of this disciplinary alternative would represent a change of placement and would require an appropriate hearing. (Thomas, 1985, pp. 54-55)

**Time-Out-Room**

This approach may be used as a preventive or a disciplinary measure. If a student feels upset and recognized his/her inability to cope with the classroom situation, she/he may request to spend some time in the time-out room. A major obvious concern here is that student might use the room as a tactic to take a "break" from school work. As a disciplinary measure, it is used to separate the students from those who are being distracted by the display of inappropriate behavior, and to give the student a chance to calm down enough to dis-
cuss the situation objectively. "Isolation" and "segregation from peers" are also considered by some a negative consequences that will deter repetition of the behavior in question.

Major concern about such an approach, when used as a disciplinary measure are the lack of supervision and not providing an educational program. If such a strategy is used, it should be for a short period of time, allow for some supervision, and should always be followed by a discussion of the precipitation events. Terms such as "cooling off room," "thinking room," or "time-out room" are preferrable to "isolation." (Grosenick & Huntze, 1984, pp. 87-88)

Alternative, Work Study, and Vocational Programs

These alternatives were especially viable for students who fit strongly into the profile of truancy, a potential discipline problem, or who are in need of vocational experiences and training prior to high school graduation. These centers are sometimes set up within a regular school facility, and other times are located in training centers, or in completely separate facilities. Academic and survival skills instruction usually occurs two-four hours daily, with vocational training or actual job placement occupying the remainder of the day.
Graduation requirements vary from school district to district and need to be considered prior to the development of an alternative center. Districts may award students who complete the program with regular high school diplomas, or one of several variations: an attendance certificate, contiguous progress diploma, or a school certificate which documents successful completion of the specific program. (Grosenick & Huntze, 1984, pp. 88-89)

**Family Involvement and Responsibility**

A very simple approach, used primarily for students who are chronically tardy, absent, or discipline problems is to involve the parent(s). A call should be made to the home or parent's work place, as soon as it's known that the student is not in school or the student is behaving inappropriately (i.e., after all possible preventive strategies have been tried). Encouragement to get the student to school would be given. If the absentee problem continues, legal action against the parent(s) for their child's truancy could be instigated. The parent(s) would be involved in establishing contingencies, methods or strategies to try to prevent the student's misbehavior from reoccurring and an appropriate consequence will be chosen appropriate to the student's offense. (Grosenick & Huntze, 1984, p. 89)
Ombudsperson Program

The District may hire new personnel, involve current personnel, or select students to serve as mediators. In such cases, teachers and students could file complaints with the project staff. Ombudspersons would then review the complaint and mediate a cooperative resolution. They could also function in a preventive manner.

Disadvantages of such an approach could include inconsistent resolutions and consequences for a specific rule violation. Inherent within this model is an unavoidable delay between the conflict and the resolution. Ideally, little time should pass between behavior (appropriate and inappropriate) and consequences. (Grosenick & Huntze, 1984, p. 89)

More Restrictive Placement

The multidisciplinary team should consider the need for more restrictive placement when handicapped students are having difficulty behaving appropriately. Although P.L. 94-142 requires the least restrictive placement, it also requires a placement appropriate to the needs of the handicapped student. If a handicapped student needs a special class, a special school, or a residential school, the placement that meets the student's needs should be provided. (Adamson, 1984, p. 95)
Remediation Strategies

Remediations strategies that follow may assist educators in avoiding suspension/expulsion of handicapped students.

**Isolation**

Isolation is often used with a student who is acting out (behavioral problem). The student is removed from the original setting. The student should go to a designated place (i.e., another room or classroom where he/she can be supervised and continue their assignment). This is only temporary. When the student is ready to behave, he or she may return to his or her regular classroom. (Becker, Engelman, & Thomas, 1975, p. 260)

**Individual/Group Contingency**

Group contingency or individual contingency may be utilized to decrease an inappropriate behavior and increase the likelihood of the desired target behavior. For example, the class cannot have a popcorn party on Friday if they continue to laugh when John "curses." This is a group contingency used to decrease the inappropriate behavior of the class laughing out at John. An individual contingency for John might be to award him with a desired activity at the end of the day if he
does not curse out in class. John's rewards/activities will gradually decrease as his appropriate behaviors increase (i.e., to avoid dependability on the artificial stimuli). (Becker, Engelman, & Thomas, 1975, pp. 98-100)

Incompatible Alternatives

An incompatible alternative is basically having the child/student do something incompatible instead of the ordinary behavior. For example, have the student count to twenty instead of making distracting noises in the class. This is done everytime the child has the urge to make these noises. Whatever the behavior may be, an incompatible alternative may be utilized to decrease or eliminate the undesirable behavior. (Becker, Engelman, & Thomas, 1975, p. 259)

Overcorrection

Overcorrection is a mild form of punishment. When a person displays an inappropriate behavior/act he or she has to make restitution and make it better than it was originally. For example, a student writes on his or her desk. The student must clean every desk in the classroom. The student has made restitution for writing on one desk plus made all desks better than they were originally. (Sulzer-Azaroff & Mayer, 1986, pp. 177-179)
Response Cost

The student pays a fine, gives up something, or loses something due to his/her inappropriate behavior. For example, everytime the student is out of his or her seat in class, a minute is deducted from his or her free time. Response cost can be very effective if the item that is taken away from the student is something the student truly likes and admires. (Becker, Engelman, & Thomas, 1975, p. 33)

Satiation

Satiation is over indulging in a reinforcer to make it undesirable to the student. Satiation works to decrease an undesirable behavior. The student likes the behavior but the adult does not want the behavior to reoccur. For example, a student follows the teacher around the room continuously. The student will do anything to get the teacher's attention. The teacher has an aide, volunteer, another teacher or principal watch his/her class for a day. The teacher spends all of his/her time one to one with the student. The teacher has the student (e.g., to eat, sit, work, talk) with only him/her all day. The student becomes satiated with the reinforcer (the teacher). The student no longer has the need for the teacher's attention anymore. (Becker, Engelman, & Thomas, 1975 p. 136)
Extinction

Extinction is when a previous reinforced behavior is no longer reinforced. For example, the teacher used to yell "sit down" everytime Sue was out of her seat. Now the teacher praises Sue everytime she's in her seat. The teacher only rewards appropriate on target behavior. The teacher no longer reinforces Sue's inappropriate behavior (out of seat behavior). (Becker, Engleman & Thomas, 1975, pp. 54-55)

Summary

The goals of education include helping students acquire knowledge, skills, and attitudes related to appropriate behavior in a social environment. When students exhibit behavioral problems, school personnel have an obligation to take ordinary precautions to protect other students and school property from harm or danger in the process.

School personnel should provide counseling, educational intervention, and less punitive strategies for handling handicapped students discipline problems or misbehaviors. This includes analysis of the student's problem to determine if the behavior is related to the learning deficiency or handicapping condition which can be corrected by modifying methods, materials, or techni-
ques used in the program. If it is suspected that a student's behavior is related to an inability to learn or conform to normal standards of behavior because of a handicap, the district has an obligation to evaluate the student to determine if the student is eligible for and in need of special education.

School personnel should take immediate actions to better control inappropriate behaviors or discipline problems in the school. This includes:

(a) environmental manipulation, such as changing the student's seating location;

(b) removing the student from a situation that may stimulate adverse behavior;

(c) temporary removal to an isolated setting to allow the student to regain composure and reflect on the impact continued negative behavior will have; and

(d) providing a reasonable consequence, such as denial of privileges, making up the work after school, or other types of punishment the school has established as preventive measures to suspension/expulsion. See alternatives and remediation strategies listed in this paper. (Michigan Department of Education, 1984, p. 5)

If a student continues to exhibit behavior which may ultimately lead to suspension or expulsion, school personnel have the obligation of notifying the parent(s) or guardian and should request to meet with the parents to discuss alternatives for resolving the problem.

If the adverse behavior is found to be related to the noneducational problems, such as a death in the family,
marital problems, a representative from the school district should work with the parents to help them develop strategies for resolving the problem. These might include referral to community mental health, a child guidance clinic, or a qualified counselor.

If evidence leads school personnel to suspect a student has a mental health problem, parents should be advised to seek medical or psychological services. In extreme cases, the parents may decide to withdraw the child from school on a temporary basis under a physician's order for physical treatment or intensive mental health therapy.

When handicapped students inappropriate behavior occur, teachers, support services staff, administrators, and parents should collaborate to initiate early intervention, and provide preventive and remediation strategies to the unacceptable behavior. Some of these preventive alternatives and strategies may include: altering the student's educational environment, initiating counseling services, detention, in-house suspension, time-out, behavioral contracts, self-monitoring skills, modifying the instructional approach, referral to community agencies, or initiating a referral for possible placement in a special education program. Communication and follow-up should involve school personnel, the parents or guardian,
and the student. When efforts have been unsuccessful over a reasonable period of time, the school district may need to consider suspension or expulsion. The preventive alternatives and remediation strategies provide an opportunity to continue the assigned program or give the school the chance to make an alternative placement that maintains contact between the school and the students.

The summary and evaluation on suspension and expulsion of handicapped students follows in the final chapter.
CHAPTER VI

SUMMARY AND EVALUATION

This paper reviewed, evaluated, and summarized the history of suspension and expulsion of handicapped students from public schools. A review of the judicial decisions and legislation over the past decade provided the rationale for a marked decrease in the exclusion of handicapped students from public schools. However, the exclusion of handicapped students from public schools due to disciplinary suspension and expulsion was identified as a continuing and significant problem.

This paper had four purposes. The first purpose was to review and synthesize the findings of research studies about suspension and expulsion of handicapped students as a disciplinary procedure in public schools. The second purpose was to set forth State Board of Education policy on suspension and expulsion. A third purpose was to advise educators, (local, intermediate, and state school officials), parents, and advocates of the statutory references, policy, legal authority, and mandatory due process procedures to follow when suspending or expelling handicapped students. The fourth purpose was to suggest alternatives to suspension and exp-
pulsion that school officials may utilize to better accommodate handicapped students disciplinary problems.

Prior to 1972, special education programs and services were operating in states through permissive legislation, which indicated that intermediate and local school districts may provide special education programs for handicapped children and the districts were entitled to receive some portion of the funding through the state. During this period of time, since special education programs and services were permitted but not required, there were few formal rules and regulations governing legislation. In 1972, two landmark cases, the Pennsylvania Association for Retarded Children (PARC) v. Commonwealth, Pennsylvania (1972) and Mills v. Board of Education of the District of Columbia (1972) established handicapped students' rights to a free public education. These two cases based handicapped rights on equal protection and due process clauses of the Fourteenth Amendment to the federal constitution. Both cases required the districts to admit previously excluded handicapped students to attend their schools and provide them with hearings and review procedures for any change in educational placement. These cases were influential in establishing the constitutional rights of handicapped students. Both PARC and Mills have been cited frequently (Dunn, 1975;
Sullivan, 1981; & O'Reilly & Sayler, 1985) as precedent for the constitutional claims of due process and equal protection rights for handicapped.

PARC and Mills focused legislation attention on handicapped students needs. The result was the passage of Section 504 of the Rehabilitation Act of 1973, Education for all Handicapped Children Act of 1975 (P.L. 94-142), and P.A. 451 of 1976 (School Code of 1976).

Section 504 provides, "No otherwise qualified handicapped individual as defined in section 7(b), in the United States shall solely by reason of his handicap be excluded from participation in any program or activity receiving federal financial assistance." (U.S. Department of Education, 1982, p. 33839) Public Law 94-142, was the final result of the Mills and PARC cases. P.L. 94-142 is a funding law incorporating the procedures delineated in PARC and Mills (i.e., both the state and local agencies must adhere to the acts procedural provisions if they are to benefit from the funding provisions). Public Law 94-142 (EAHCA) require that each state provide handicapped students the right to a free appropriate education in the least restrictive environment. It provides comprehensive procedural safeguards in evaluation and placement of handicapped children. P.L. 94-142 requires decisions regarding the identification and placement of
handicapped students be made only by a multi-disciplinary team of "specialized and knowledgeable persons" (i.e., this team will decide what is and what is not "appropriate" at any given time, place, and situation). Furthermore, it requires that each handicapped student must have an Individual Educational Plan (IEP) written specifically for him or her by the professional team with the help of the parents. It allows anyone dissatisfied with a placement or evaluation the right to bring civil action in the state or federal court. Finally, it provides "pendency" to handicapped students during a due process proceeding (i.e., the student must remain in the current placement until the due process procedures are completed, unless the parents, agency, or court agree otherwise).

Handicapped students' rights to free appropriate public education in the least restrictive environment have been assured in many ways (i.e., included in federal and state legislation, regulations, and litigation). However, the issue on suspension and expulsion still remains unresolved. The due process rights related to suspension or expulsion of handicapped students from school for disciplinary reasons remain unclear.

However, in *Goss v. Lopez* (1975) the Supreme Court determined the public school students suspended from
school for a short term (up to 10 days) "must be given some kind of notice and afforded some kind of hearing."
The court also warned that "longer suspension or expulsions for the remainder of the term or permanently, may require more formal procedures." (Michigan Department of Education, 1984, p. 14) Goss set the legal precedent for due process procedures to be afforded to any public school student during disciplinary suspension and expulsion.

Administrators or disciplinarians in schools across the nation have faced these dilemmas: (a) How can they maintain and promote an atmosphere conducive to learning and meet the educational needs of unruly and disruptive handicapped students? (b) Can a handicapped student be suspended or expelled from school for their misbehavior like their peers (nonhandicapped students)? (c) Can a handicapped student be suspended or expelled for misbehavior related to his/her handicapping condition? (d) Is suspension or expulsion of a handicapped pupil a change in educational placement? and (e) If misbehavior is related to a handicapping condition, is suspension or expulsion a denial of free appropriate public education guaranteed by the Education for All Handicapped Children Act of 1975?

These dilemmas stem in part from the fact that public education, while adopting a policy of individualized services and due process procedural safeguards for handi-
capped children has not commitantly individualized dis-
ciplinary procedures dealing with handicapped children.

Consequently, the State Board of Education has
adopted statutory and mandatory provisions (statutory
references, policy, and due process procedures) for
educators to follow when suspending and expelling handi-
capped students. The mandatory procedures drawn from
the statutory and mandatory provision for suspension and
expulsion are summarized as follows:

1. Handicapped students are not exempt from sus-
pension or expulsion from school.

2. The legal authority to suspend or expel rests
with the school board of education (i.e., only those
persons authorized by the board to act in their behalf
may suspend a student from school).

3. According to the School Code (1976) Section 1311,
the board of education may authorize or order the sus-
pension or expulsion from school of a pupil guilty of
gross misdemeanor or persistent disobedience when in
the board's judgment demanding suspension or expulsion is
the best interest of the school.

4. A handicapped student being considered for sus-
pension of 10 days or less must be provided the Goss v.
Lopez, (1975) procedures (i.e., as a minimum, an informal
administrative hearing). This will include a meeting
between the principal or other person authorized by the board to administer suspension to the student. The purpose of the hearing is to notify the student of the charges and to provide the student the opportunity to defend him or herself.

5. Handicapped students are entitled to Goss v. Lopez (1975) procedures as well as the procedural safeguards described in P.L. 94-142 and Section 504 of the Rehabilitation Act (1973).

6. Where an emergency exists or a handicapped student endangers self or others, there can be an immediate removal from school with notice and hearing following as soon as practical/possible.

7. Suspensions less than 10 days are not considered a change in educational placement.

8. A trained and knowledgeable group of persons must determine whether a handicapped student's misconduct is related to his or her handicapping condition, and whether the student is appropriately placed before the student can be suspended or expelled.

9. If there are any questions about misbehavior (relating to the student's handicap or appropriate placement). A new IEPC meeting must be convened prior to suspension or expulsion. The student may remain in school pending the findings of the Individual Educational Plan-
ning Committee (IEPC), unless the student cannot safely be contained within the school setting and other arrange-ments have been made and agreed upon by the parents, agency, or court.

10. If a handicapped student's misbehavior is not related to his or her handicap or inappropriateness of placement, the student can be suspended under the district's disciplinary procedures for a period not in ex- cess of 10 days.

11. If the handicapped student's behavior is related to his or her handicapping condition, the student cannot be suspended or expelled. The district must consider al- ternative and/or more restrictive placements that meet the student's need.

12. Expulsion is considered a change in educational placement and a violation of the EAHCA of 1975.

13. If a handicapped student's misconduct is not caused by the handicap and proper procedures are followed, the student may be expelled. However, a complete cessation of all educational services is prohibited.

14. During the pendency of any appeal proceedings, a student must be allowed to stay in the present place- ment until resolution of the complaint.

Historically, the twenty-two court cases cited after the PARC (1972), Mills (1972), and Goss (1975) decisions are
related to suspension and expulsion of handicapped students. In almost every case, public schools have tried to handle the suspension and expulsion of handicapped students as they would any other student. The court decisions have indicated that public school districts must comply with the procedural safeguards of P.L. 94-142 (1975) and Section 504 of the Rehabilitation Act (1973) when considering suspension and expulsion of handicapped students.

An analysis of the court cases would lead to the determination that state education agencies throughout the United States have not developed clear-cut and consistent guidelines, policies or regulations which would reflect the procedural safeguards of P.L. 94-142 (1975) in regard to suspension and expulsion of handicapped students. Consequently, local education agencies have had many class action suits brought against their school districts for violations of P.L. 94-142 (1975) and Section 504 of the Rehabilitation Act (1973).

Suspension and expulsion are not good disciplinary measures to use for controlling inappropriate behavior of handicapped students. There have been cases where students having difficulty at school have committed minor violations in order to be suspended so they do not have to attend school (they have been positively reinforced for their inappropriate behaviors).
For this reason, school administrators must use suspension and expulsion with caution. Schools should develop more constructive alternatives to suspension and expulsion that will better accommodate the needs of handicapped students. Suspension and expulsion is the school's admission of its inability to adequately serve students' needs. The schools cannot serve or educate handicapped students if they are consistently suspended or expelled. Schools are saying that there is no solution within the school to change the behavior or problem of handicapped students. Suspension and expulsion from school reward serious violations of the disciplinary code (i.e., by excluding the students who dislike school and are generally unsuccessful).

Statistics on suspensions and expulsions of handicapped students according to Cottle (1975) indicated:

1. Suspension or expulsions are used disproportionately with minorities, blacks, poor and male students.

2. Secondary school students are suspended twice as often as other children.

3. Black students are suspended from school three times as often as white children and for longer periods of time.

4. The majority of suspensions are minority students.

5. One of the major reasons for suspending a student from school was to get the student's parent(s) into suspension deliberations and into the school. A large percentage of
suspended children return to school without their parents being involved in the reinstatement hearing. (p. 5)

A summation of the alternatives to suspension and expulsion for handicapped students follows:

1. Reviewing and Revising the Discipline Code.

2. Establishing the Relationship Between the Misbehavior and the Handicapping Condition.

3. Preventing disciplinary problems by:
   (a) Direct Instructions
   (b) Extra Curriculum Activities
   (c) Self-Monitoring Skills
   (d) Counseling and Counseling Centers
   (e) After School Detention and Saturday School
   (f) Behavioral Management Procedures
   (g) In-School Suspension
   (h) Time-Out Room
   (i) Alternative, Work Study, and Vocational Programs
   (j) Family Involvement and Responsibility
   (k) Ombudsperson Program
   (l) More Restrictive Placement

4. Remediation Strategies
   (a) Isolation
   (b) Individual/Group Contingency
   (c) Incompatible Alternatives

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(d) Overcorrection
(e) Response Cost
(f) Satiation
(g) Extinction

It is clear that school personnel, teachers, principals, and other administrators may need punitive alternatives to deal with those difficult instances when a handicapped student's misconduct may present a danger to him/herself, other people, or school property. It seems that a variety of positive and constructive alternatives need to be offered (i.e., program options) that a district can easily implement to assist the schools in better accommodating handicapped students inappropriate behaviors. The following are alternative programs school district's may utilize: (a) time-out, (b) in-school suspension, (c) detention and Saturday school, (d) direct instructions, (e) alternative work study, (f) vocational programs, and (g) counseling. All of these alternatives provide the school and the district the option of continuing the student's recommended educational program. In addition, such alternatives may provide time to monitor a handicapped student's behavior for a specified period before other recommendations, such as suspension, home instruction, or formal expulsion are considered. It allows sufficient time to initiate ongoing communication between
school and parents regarding the student's misconduct. Handicapped students will not be reinforced for their inappropriate behavior by being suspended or expelled (i.e., allowing them to stay home and do as they please). These alternatives listed previously are helping the schools' meet the students' needs and making the students responsible for their misbehavior. School systems need to review and revise their disciplinary policies in such a way to take into account the thrust of decisions described and analyzed in this paper. School districts may avoid potential conflict, litigation, and the need to continuously suspend or expel handicapped students for misbehaviors that are a manifestation of the student's handicapping condition (i.e., with thorough revamping of their current policies).

Some of these alternatives listed previously in this paper may be currently impossible for many districts battling budget and personnel cutbacks. For example, the infrequent availability of counselors is often cited as a continuing problem in dealing with difficult students (handicapped and nonhandicapped). Administrators in school may also feel hardpressed to find time to address all the schools' disciplinary needs let alone to deal with what in some instances may appear to be an unwritten policy for special education students. However, if
educators do not consistently provide constructive and positive alternatives to suspension and expulsion, parents of handicapped students will have to continue to bring civil suits to secure equal access to the schools for their children. After evaluating this report on the findings of research studies about suspension and expulsion of handicapped students as a disciplinary procedure in public schools the following may be stated:

1. Every board of education that has not rewritten its discipline policies to comply with handicapped legislation and judicial rulings should take prompt action to do so.

2. Public school administrators should keep abreast of court decisions relating to the disciplinary suspension and expulsion of handicapped students and revise policies and procedures as new interpretations are provided.

3. Substantive changes should be made in the ways schools use suspension and expulsion with handicapped students (i.e., suspension and expulsion should be used as the very last resort and be limited to 10 days or less for serious offenses involving violence against persons or property).
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