

October 26, 2004

The Honorable Mike Castle
Chairman, Subcommittee on Education Reform
1233 Longworth HOB
Washington, DC 20515

Dear Mr. Chairman:

As members of the Juvenile Justice Coalition, we are deeply concerned about proposed changes to the discipline provisions of the Individuals with Disabilities Education Act that will harshly impact children with disabilities—particularly those with behavioral and learning disabilities who are most at-risk of school failure, dropout and delinquency. As a Conferee, we urge you to maintain key current law protections for children with disabilities in the final legislation. Among these key provisions are:

Manifestation Determination Review. The manifestation determination helps ensure that children with disabilities are not arbitrarily removed from school because the school failed to provide them with the supports they need to remain safely in the classroom, because of their disability or because they were unable to control their actions. Allowing indiscriminate, unilateral removal of children with disabilities for any code of conduct violation is a blatant denial of students' right to a free and appropriate public education in the least restrictive environment.

Functional Behavioral Assessments and Behavioral Intervention Plans. Any time a child is suspended, there needs to be an effective plan to prevent his or her misbehavior from happening again. The Senate bill contains excellent language to ensure that all children receive this sort of evaluation and planning as part of the IEP process. Such planning also should be linked to the discipline process to ensure that subsequent services most effectively address the behavior that precipitated removal.

Maintenance of Current Educational Placement. If schools want to remove a child for more than 10 days and this placement is disputed by the child's parents, the "stay-put" provision ensures that children with disabilities can stay in their current educational placement pending resolution of the dispute. Missed, disrupted and segregated school-time increases the risk of future behavioral problems, school failure and dropout—particularly for children with disabilities. Allowing schools to unilaterally remove these children for more than 10 days could unfairly deny them a free and appropriate public education and risks making students and communities less safe.

Non-cessation of Services. If children are suspended or expelled, it is critical that they continue to receive high quality services under IDEA so they can progress in the general education curriculum and receive the services necessary to address their disabilities and prevent future behavioral problems. We are thankful that both the House and Senate versions of the reauthorization do not permit the cessation of services for children who are suspended or expelled.

We recognize that there are situations in which removal from the classroom is an appropriate disciplinary response for disabled students, but failure to maintain these protections would be a major step backwards in federal policy to provide a free and appropriate public education to children with disabilities. Even with current law protections, students with disabilities are over-represented among students who are expelled.¹ This is despite the fact that few of those who are removed from school present serious dangers to students or staff.²

Overwhelming evidence suggests that such approaches are contraindicated and harmful to children. Research documents that positive individual and school-wide behavioral supports result in significant reductions in disciplinary problems, while removal from the classroom makes matters worse.³ Numerous studies show that students who are suspended or expelled are more likely to drop out of school.⁴ The problem is worse for students with disabilities, 28% of whom cite discipline issues as their reason for dropping out.⁵ Once students drop out, they are three and one half times more likely to be arrested than those who do not.⁶

These problems are particularly acute for minority students. During the 1999-2000 school year, Black students with disabilities were more than three times as likely as Whites to be given short-term suspensions. Similarly, they were nearly three times more likely than White students to be removed from school for more than ten days. Black and Latino youth with disabilities were between two and four times more likely to be removed from school and educated in correctional facilities than White youth.⁷ Such restrictive placements mean that minority special education students are likely to receive unequal services.⁸ These disparities contribute to the overall negative outcomes among minority youth with disabilities, including far greater rates of dropout, incarceration and unemployment.

To ensure the safety of students, schools and communities, we urge you to maintain these key student protections. Thank you for your consideration of this critical issue.

Sincerely,

American Counseling Association
American Psychological Association
Bazelon Center for Mental Health Law
Children and Adults With Attention-Deficit/Hyperactivity Disorder (CHADD)
Children's Defense Fund
Church Women United
Council for Children with Behavioral Disorders
Council for Exceptional Children
Justice Policy Institute
Learning Disabilities Association of America
NAMI (The National Alliance for the Mentally Ill)
National Alliance to End Homelessness
National Association of Protection and Advocacy Systems
National Association of School Psychologists
National Association of Social Workers

National Mental Health Association
Presbyterian Church (USA) Washington Office
School Social Work Association of America
Women of Reform Judaism
Youth Law Center