

THE CHANGES TO IDEA DISCIPLINE PROVISIONS IN HR 1350 ARE NOT WARRANTED AND WILL LEAD TO UNFAIR AND INAPPROPRIATE TREATMENT OF STUDENTS WITH DISABILITIES



March 2003

HR 1350 undoes key protections for children with disabilities who are being disciplined. It:

- Allows schools to unilaterally remove any child whom it determines to have violated a student code of conduct policy, regardless of severity, to an alternative interim setting for up to 45 days;
- Eliminates the “manifestation determination” process altogether, which protects students from being unfairly punished for actions that are beyond their control because they are a result of students’ disabilities; and,
- Eliminates the requirement for functional behavioral assessments and positive behavioral interventions which are necessary to ensure that students are not unreasonably punished if they did not get the supports to which they are entitled under the Act and which are necessary to help them succeed in the classroom.

Research clearly indicates that the dramatic changes to student discipline policy in HR 1350 are not necessary.

- A 2001 GAO study found that IDEA discipline provisions do not hinder school officials in disciplining students. In the study, 81% of principals found that special education requirements based on federal, state and local statute did not inhibit their ability to discipline students. In fact, principals generally rated their schools’ special education discipline policies as having “a positive or neutral effect on school safety and orderliness.”
- The same GAO study also found that children with disabilities were NOT given greater leeway in their behavior as a result of IDEA.

Permitting schools to suspend students with disabilities for any “code of student conduct” violation is not appropriate, because these students are often not provided the supports they need to address the causes of their behavior.

- 80% of states are out of compliance with IDEA’s requirement to provide free and appropriate public education to children with disabilities. (National Council on Disability, 2000).
- Only 1 in 5 students with mental health problems receive any treatment (Office of the Surgeon General, 1999).
- The National Longitudinal Transitional Study of Special Education Students found a wide disparity in quality instruction and related services provided to African American and Latino youth identified with Emotional and Behavioral Disorders (EBD) (Valdes., et al., 1990).

72% of states are out of compliance with IDEA’s “least restrictive environment” provisions (National Council on Disability, 2000). These are intended to ensure that children with disabilities are educated to the greatest extent possible in the mainstream classroom. In this context, the provisions of HR 1350 that would allow schools to unilaterally remove students with disabilities from the classroom are particularly concerning. Even with current law protections, students with disabilities are over-represented among students who are expelled (Morrison and D’Incau, 1997). This is despite the fact that few of those who are removed from school present serious dangers to students or staff (Morrison, 2001).

Integrating students with disabilities in the mainstream classroom, offering high academic standards and curriculum, and providing high quality, positive behavioral interventions have been shown to improve all students’ behavior and achievement.

- According to the U.S. Department of Education, “Social interactions between students with and without disabilities are enhanced when students with disabilities are served in regular classes—and are beneficial for many students without disabilities” (1999).
- Providing positive behavioral supports for all students, including those with significant behavioral challenges, contributes significantly to advancements in student achievement (Horner and Sugai, 2002).
- Effective behavioral interventions can prevent negative outcomes such as school failure, incarceration and substance abuse (Office of the Surgeon General, 1999).
- Classes that include high academic expectations and meaningful instruction result in fewer behavioral problems for students with Emotional and Behavioral Disorders (Children’s Behavioral Alliance, 2002).

In contrast, suspension, expulsion and segregation of students with behavioral problems lead to severely negative outcomes for students with disabilities.

- Segregating students with EBD increases future behavioral problems (Dishion, McCord and Poulin, 1999).
- Numerous studies show that students who are suspended or expelled are more likely to dropout of school (e.g. Keleher, 2000). The problem is worse for students with disabilities, 28% of whom cite discipline issues as their reason for dropping out (Brooks, Schiraldi and Zeidenberg, 2000).
- Ineffective approaches to discipline increase the probability of dropping out more than any other single factor (National Association of School Psychologists, 2003).
- Students who dropout are three and one half times more likely to be arrested than those who do not dropout (National Association of School Psychologists, 2003).

Eliminating the procedural safeguards in IDEA around discipline will have a disparate impact on minority youth with disabilities.

- Studies show that restrictive placements mean that minority special education students are likely to receive unequal services (Crockett and Kaufman, 1999).
- Black students are more likely to be suspended and expelled and suffer harsher consequences for behavioral problems than their White peers. 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 (Osher, Woodruff and Sims, 2002).
- When removed from the classroom, Black and Latino youth with disabilities were between two and four times more likely to be educated in correctional facilities than White youth who were removed from the classroom.¹
- Black, Latino and Native American youth with disabilities were 67 percent more likely than White children to be removed on grounds of dangerousness by a hearing officer (Osher, Woodruff and Sims, 2002).

For more information, contact Jill Morningstar, Co-Director of the Education and Youth Development Division, at (202) 662-3574 or jmorningstar@childrensdefense.org.

¹ Calculations based on the December 1, 1999 Count, updated as of August 30 2001, U.S. Department of Education, OSEP Data Analysis System (DANS).

SOURCES:

- Brooks, K., Schiraldi, V. and Ziedenberg, J. "School House Hype: Two Years Later." Washington D.C.: Justice Policy Institute and Children's Law Center, Inc.. April 2000.
- Crockett, J. B. and Kauffman, J. M. The Least Restrictive Environment: Its Origins and Interpretations in Special Education. Mahwah, New Jersey: Lawrence Erlbaum. 1999.
- Dishion, T. J., McCord, J. and Poulin, F. "When Interventions Harm: Peer Groups and Problem Behavior." *American Psychologist*. 1999.
- Horner, R.H., Sugai, G., Lewis-Palmer, T. and Todd, A.W. "Teaching School-wide Behavioral Expectations." *Report on Emotional Disorders in Youth*. 2001.
- Keleher, Terry. "Racial Disparities Related to School Zone Tolerance Policies." Testimony to the U.S. Commission on Civil Rights. February 18, 2000.
- Morrison, G. M., and D'Incau, B. "The Web of Zero Tolerance: Characteristics of Students Who are Recommended for Expulsion from School. *Education and the Treatment of Children*. 1997.
- Morrison, G. M., et al. "School Expulsion as a Process and an Event: Before and After Effects on Children At Risk for Student Discipline." *New Directions for Youth Development. Zero Tolerance: Can Suspension and Expulsion Keep Schools Safe?* San Francisco, CA: Jossey-Bass. 2001.
- The National Council on Disability. Back to School on Civil Rights. http://www.ncd.gov/newsroom/publications/backtoschool_1.html, 2000.
- Office of the Surgeon General. "Mental Health: A Report of the Surgeon General." Rockville, MD. U.S. Government Printing Office. 1999.
- Osher, D, Sims, A. E. and Woodruff, D. "Schools Make Difference: The Overrepresentation of African-American Youth in Special Education and the Juvenile Justice System". Racial Inequality in Special Education. Ed. Losen and Orfield. Cambridge: Harvard Education Press. 2002.
- United States Department of Education. "Twenty-first Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act." Washington, DC: U.S. Government Printing Office. 1999.
- United States General Accounting Office. "Report to the Committees on Appropriations, U.S. Senate and House of Representatives: Student Discipline, Individuals with Disabilities Education Act" (GAO-01-210). Washington, DC: U.S. Government Printing Office. 2001.
- Valdes, K. A., Williamson C.L., and Wagner, M. The National Longitudinal Transition Study of Special Education Students. Vol. 3: "Youth Characterized as Emotionally Disturbed." Palo Alto, CA: SRI International. 1990.