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The Perceived Impact of the Individuals with Disabilities Education Act (IDEA), 1997 Disciplinary Mandates on the School Board Policies in Three Urban, K-12 Public School Districts

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by

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To Irene Lowry, my grandmother,
who told me I could be anything I wanted to be.

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The Perceived Impact of the Individuals with Disabilities Education Act (IDEA), 1997 Disciplinary Mandates on the School Board Policies in Three Urban, K-12, Public School Districts

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ABSTRACT

In 1990 the Individuals with Disabilities Education Act (IDEA) required that states provide a free and appropriate education to all children and youth with disabilities, no matter how severe the disabilities. This obligation was tied to federal funding and outlined in detail parental rights with regard to identifying and educating their child with disabilities. The 1997 reauthorization of IDEA stepped into school discipline, creating a complex process for addressing school misconduct of such students.

This study determines how the 1997 IDEA disciplinary mandates, as they existed until May 2003, were interpreted and implemented in three similar, urban, public school districts and how selected staff members perceived that implementation.

School board policies in the three, urban, K-12, public school districts were very similar and, in many cases, drew language directly from the IDEA law. In each district, additional documents were developed providing detailed instruction to school based educators working directly with students with disabilities and their families. The policies and guidelines reflect a clear commitment to compliance with IDEA mandates. It was not possible through this study to assess whether the spirit of the law is part of the district culture. Staff were knowledgeable of IDEA provisions and where to seek assistance

within their respective organizations. Administrators and attorneys stated that their responsibilities have expanded since the 1997 reauthorization and that more of their and their staff members' time is used addressing disciplinary issues. School principals reported concerns about the length of time it takes initially to identify students with disabilities and application of the dual discipline system created by the 1997 mandates. A majority of the principals expressed concern about the dual discipline systems. It would be helpful to undertake a longitudinal study of teachers and their attitudes towards students with disabilities.

Chapter One

Introduction

This qualitative study addresses the perceived impact of the Individuals with Disabilities Education Act (IDEA) on specific public school board policies and procedures that deal with student discipline. The policies studied were developed in three public, urban school districts in the United States that have operated at some point within the confines of a federal desegregation court order. A triangulation of data sources was used to compare the impacted school board policies, rules and procedures in Pinellas County, Florida, Charlotte-Mecklenberg, North Carolina and Indianapolis, Indiana.

Legal History

The first laws in our country to address individuals with disabilities dealt with the designation of a marine hospital to serve sailors with disabilities. This authorization was passed in 1798 and eventually became the Public Health Service. Until the 1960's laws designed to aid persons with disabilities targeted war veterans and focused primarily on disabilities related to the individual's service in the armed forces (NICHCY, 1996). This focus allowed public schools to ignore the educational needs of children with disabilities in the population and yet remain within the law.

Finally, after persistent pressure from advocates, largely the families of children with disabilities, the 89th Congress passed Public Law 89-10, the Elementary and Secondary Education Act of 1965. Subsequent amendments, which occurred during the

same year, set the stage for increasing federal involvement in the education of students with disabilities. The initial act was designed to ensure quality education for students throughout the country. Eight months after its congressional enactment, the first set of amendments created a federal grant program to assist young people with disabilities attending state operated or supported institutions and schools. The grant program was opened in 1966 to local schools and became known as Title VI. At the same time the Bureau of Education for the Handicapped was established by Public Law 89-750 to assist states in developing, maintaining and evaluating programs for children with disabilities and to create the National Advisory Council, today known as the National Council on Disability.

Public Law 90-247 in 1968 amended the Elementary and Secondary Education Act again and established a number of supplemental and supportive education oriented programs. These included teacher recruitment and resource centers. The Education of the Handicapped Act (Public Law 91-230), passed in 1970, was an effort to help states consolidate a number of programs that had been functioning independently of each other. Public Law 93-380 passed in 1974 included amendments that changed the Elementary and Secondary Act to the Education of the Handicapped Act Amendments of 1974 (Longmore, 2001, pp. 375-376). Its mandates included the following:

- States were required to develop timelines for offering full educational opportunities to <u>all</u> children with disabilities.
- Mainstreaming children with disabilities to the extent possible.
- Procedural safeguards were to be put into practice (NICHCY, 1996, p. 6).

Congress passed the Education for All Handicapped Children Act (EAHCA Public Law 94-142) in 1975. This grant formula legislation encompassed most of the significant legal protections to be found in the Individuals with Disabilities Education Act (IDEA), which renamed it in 1990. A free appropriate public education (FAPE) was guaranteed to all children with disabilities and procedural safeguards for their families were strengthened. Federal dollars were made available to help states meet these increased legal requirements.

> The passage of the EAHCA resulted in thousands of administrative challenges and EAHCA lawsuits filed by disabled students and their parents, forcing states, local educational agencies, and school districts to bring themselves into compliance with the new federal law (McEllistrem and Roth, 2000, p. 2).

At this point Congress committed to provide 40 percent of the "incremental costs" of implementing the detailed requirements of EAHCA, but by 2001 the federal level of funding hovered at only 12 percent. Additionally, courts, when rendering a decision on special education cases appear to have little or no consideration of the costs to the LEA of court ordered compliance requirements (McEllistrem and Roth, 2002, p. 3).

The 1990 IDEA further expanded the scope of federal regulations in the area of educating children with disabilities. Federal funds were to be provided to states and districts for educational programs for children with disabilities under the following conditions:

States must ensure that:

- All children and youth with disabilities, regardless of the severity of their disability, will receive a Free Appropriate Public Education (FAPE) at public expense.
- Education of children and youth with disabilities will be based on a complete and individual evaluation and assessment of the specific, unique needs of each child.
- An Individualized Educational Program (IEP), or an Individualized Family Services Plan (IFSP), will be drawn up for every child or youth found eligible for special education or early intervention services, stating precisely what kinds of special education and related services or the types of early intervention services, each infant, toddler, preschooler, child, or youth will receive.
- To the maximum extent appropriate, all children and youth with disabilities will be educated in the regular education environment.
- Children and youth receiving special education have the right to receive the related services necessary to benefit from special education instruction. Related services include…transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of

disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in school, and parent counseling and training (C.F.R.: Title 34; Education; Part 300.16, 1993).

- Parents have the right to participate in every decision related to the identification, evaluation, and placement of their child or youth with a disability.
- Parents must give consent for any initial evaluation, assessment, or placement, be notified of any change in placement that may occur and be included, along with teachers, in conferences and meetings held to draw up individualized programs.
- Parents may challenge and appeal any decision related to the identification, evaluation, and placement of their child. Any issue concerning the provision of FAPE, for their child is protected by clearly spelled-out, extensive due process procedures. A "stay-put" provision requires that the child remain in the current placement until any challenge is ruled upon, including all appeals.
- Parents have the right to confidentiality of information. No one may see a child's records unless the parents give their written permission. (The exception to this is school personnel with legitimate educational interests.) (NICHCY, 1996, p. 11).

IDEA and Student Discipline

While the EAHCA did not speak to disciplinary issues, litigation led to a court decision mandating that during an expulsion, services cannot be stopped. In 1994 amendments dealing with student discipline were added to "include language that permits interim placements of up to 45 days for students with disabilities who have brought a weapon to school" (McEllistrem and Roth, 2000, p. 2).

When IDEA was reauthorized in 1997, behavioral concerns and school discipline became a bigger issue. By this time, language specifically targeting disciplinary procedures mandated that in order to receive federal funds for special education programs, the following additional provisions must be met:

1. A "free appropriate public education is available to all children with disabilities…including children with disabilities who have been suspended or expelled from school" (Western Regional Resource Center, [WRRC] 1997, p. 1).
2. A child with a disability may be moved "to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and to an appropriate interim alternative educational setting…for not more than 45 days if" the student has a weapon at school or at a school function or possesses, uses, solicits the sale of or sells "a controlled substance" at school or at a school function (WRRC, 1997 p. 2).

3. A functional behavioral assessment and behavioral intervention plan must be in place "either before or not later than 10 days after taking a disciplinary action described above" (WRRC, 1997, p.2).
4. Any "interim alternative educational setting" must allow for the student's Individual Educational Plan to be implemented (WRRC, 1997, p.3).
5. Parents must immediately be advised of a disciplinary decision and all of their procedural safeguards.
6. Immediately or "in no case later than 10 school days after the date on which the decision to take that action is made" a manifestation review must occur to determine the relationship, if any, between the misconduct and the student's disability (WRRC, 1997, p. 3).

The 1997 reauthorization of IDEA raised a number of implementation, interpretation, accountability and even ethical issues. An example is the emergence of what appears to be a dual student discipline system within a school. School district staff members struggle to develop a school wide student behavior system that includes prevention, intervention and consequences. However, the best system may fall apart when two students engaged in the same misconduct receive widely variant consequences because one is disabled, whether or not the conduct is determined to be a manifestation of the student's identified disability. Hess and Brigham state, "Protections afforded to special education students in the domain of discipline have made it more difficult to enforce clear and uniform standards in school" (Finn, Rotherham and Hokanson, 2001, p. xvi).

Educators are urged by parents of children with disabilities to increase the integration of their children into the general education setting with the outcome, at times, being the unintentional disruption of the education of students without disabilities. This phenomenon places educators in a conundrum. Kelman concludes, "More school decisions are being made by judges rather than educators as parents are unwilling to accept local intervention" (Kelman, 2001, p. 78). According to Finn, Rotherham and Hokanson, "We will not make rational policy until we see that many claims often made in debate over special education policy are important education issues but not proper civil rights claims" (Finn, Rotherham and Hokanson, 2001, p. 25).

Editors of the seventeenth Edition of *Students with Disabilities and Special Education* state, "The IDEA was enacted to vindicate the rights of disabled students, not to provide a general forum for federal claims. A three-year-old Pennsylvania child suffered severe head injuries in a traffic accident. As a result, she required special education services. After making initial payments for educational services, the family's insurer refused to provide further benefits. The parents sued the insurance company in a federal district court. The insurer then filed a third-party complaint against the student's school district under the IDEA. The insurer alleged that the district was primarily responsible for providing special education services. The district court ruled that the IDEA did not provide general jurisdiction for special education issues in federal courts. Federal regulations under the statute stated that insurers were not relieved from paying for services to students with disabilities. Accordingly, the insurer had no standing to bring an IDEA lawsuit against the school district, and the court dismissed the insurer's

complaint. *Gehman v. Prudential Property and Cas. Ins. Co.*, 702 F. Supp. 1192 (E.D.Pa.1989)" (McEllistrem and Roth, 2000, pp. 9-10).

There were attempts to make IDEA retroactive. In Department of Education v Board of Education of Oak Park and River Forest High School District 200, 115 F. 3d 1273 (7th Circuit 1997), a high school student with learning disabilities was found to possess marijuana at a school dance. The student was suspended for 10 days and an IEP team determined that the offense was not a manifestation of his disability. The student was expelled for the remainder of the semester and the parents took the matter to court demanding a rehearing based upon the 1997 IDEA amendments. Because the student's behavior occurred prior to the reauthorization, however, their request was denied (McEllistrem and Roth, 2000, p. 11).

Change of Placement

Under the IDEA reauthorization a student with disabilities is considered to have experienced a change of placement if:

- he is excluded from school more than 10 consecutive days; or
- he is the recipient of a number of exclusions that create a pattern "because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to each other" (McEllistrem and Roth, 2000, p. 513).

Thus far, case law has held that the short-term exclusion, for 10 school days or less does not mandate a determination of whether the misconduct is related to the student's disability. Some school districts have entered into agreements with parents about the use of disciplinary consequences that overstep the boundaries established by IDEA. In at least one case a Minnesota parent was permitted to have a due process hearing when, after initially agreeing that her child's bomb threat had no connection to his emotional handicap, she changed her mind. The hearing officer set aside all prior agreements and conducted the hearing. Ind. Sch. Dist., Minn., 31 IDELR 31 IDELR 44 (SEA MINN, 1999) (Martin, 2000, p. 4).

Exclusions that extend past the 10 school days within a year are possible "if an FBA (Functional Behavior Assessment) is conducted or planned for, and if services are provided after the 10th removal day" (Martin, 2000, p. 6). When one considers the practicality of providing services during a suspension, it is easily understood why most school districts restrict school suspensions to 10 days per school year, unless dealing with very severe misconducts that are outlined in the law.

During his 2000 address in New Orleans, LA, Martin (2000, p. 10) stressed that "Applying regular code of conduct terms of removal without considering the limitations IDEA places on cumulative short-term removals can get school into problems early in a school year."

Statement of the Problem

The focus of this study is to determine how the 1997 IDEA reauthorization mandates regarding student discipline have been interpreted and implemented in three

similar, urban, public school districts and how that implementation is perceived by selected staff members. The selected school districts were Pinellas County Schools, Florida, Charlotte-Mecklenberg Schools, North Carolina and Indianapolis Public Schools, Indiana.

Purpose of the Study and Research Questions

The purpose of this collective case study was to examine perceptions of the implementation in three large, urban, K-12, public school districts of 1997 IDEA mandates related to student discipline as they existed until May 2003 by reviewing policies and procedures in those districts and collecting information from selected staff members. The research questions addressed are:

1. In the three school districts how were the mandates interpreted and what school board policies were developed to implement them? How were these policies similar or dissimilar? To address this inquiry I reviewed, compared and contrasted the relevant school board policies from the three school districts to ascertain whether the federal laws were interpreted in the same manner and whether common ways of work were created in the three school districts. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the Pinellas County Florida School District, also reviewed the policies as a means of validating my findings.
2. In the three selected school districts, what guidelines other than school board policies were put into place to ensure compliance with the laws and

policies related to the exclusion from school of students with disabilities for disciplinary reasons? In this instance I collected, reviewed and compared documents prepared by staff members in the three districts that dealt with directions to those addressing school discipline of students with disabilities on a daily basis. These included Codes of Student Conduct or Exceptional Education Department Guidelines for Student Discipline and other district documents that may or may not have been adopted as policy by their school board.

3. In the three school districts what did the attorney employed by the school district, a district administrator in the exceptional education department and three principals in schools of different levels and with a median number of students with disabilities enrolled report to be their perception of the primary issues they encountered in the area of disciplining students with disabilities since the 1997 reauthorization of IDEA and through May 2003? This information was obtained through interviews with the identified individuals and in some cases submitted written responses to the interview questions. Interviews in Pinellas County, FL were face to face and interviews in North Carolina and Indiana were conducted primarily by telephone. I asked what issues they dealt with most frequently in this area of their job and whether dealing with this law and the related policies had significantly changed their way of work and if so, how? Prior to the interviews, questions were developed. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the

Pinellas County School District reviewed these questions. Dr. Mortimer must approve any survey conducted in the Pinellas County School District and works with individuals within and outside the district as they develop surveys and questionnaires to use in schools. After Dr. Mortimer's review the questions were piloted on staff members of the Pinellas County School District (one district administrator, one attorney and one principal) and finalized. After review, pilot and adjustment, questions (See Appendix A), were mailed to the interviewees and appointments were scheduled for the interviews. Interviews were conducted and responses were added to the data utilized in the study. In two instances answers to the protocol questions were returned in written form and a conversation did not occur.

Significance of the Study

By taking a historical look at how three separate but similar learning communities perceive their efforts to put 1997 IDEA student discipline regulations into practice, new avenues may emerge to meet those legal requirements effectively while maintaining a strong academic focus and a positive, safe environment for all students.

Definition of Terms

ESEA – Elementary and Secondary Education Act (1965). This law was put in place to strengthen and upgrade the general quality of education in the United States. Amendments subsequently "authorized that first federal government program specifically targeted for children and youth with disabilities" who were

being served in “state-operated or state-supported schools and institutions” and later for students with disabilities in local schools (NICHCY, 1996, p. 6).

EHA – Education of the Handicapped Act (1970). This law consolidated several federal government programs dealing with the education of children with disabilities. Many of the programs addressed resource development.

EAHCA – Education for All Handicapped Children Act (1975). This law guaranteed a “free appropriate public education” (FAPE) for all children and established significant legal protections for students with disabilities (NICHCY, 1996, p. 9). Subsequent amendments expanded pre-school educational opportunities for children with disabilities (NICHCY, 1996, p. 10).

FAPE – Free and Appropriate Public Education. Special Education and related services that

- Are provided at public expense, under public supervision and direction and without charge,
- Meet the standards of the state educational agency, including the requirements of the IDEA,
- Include preschool, elementary school or secondary school education in the state, and
- Are provided in conformity with an IEP that meets the requirements of IDEA and its implementing regulations. (Malony, 1998, pp. 8-9)

IDEA – Individuals with Disabilities Education Act (1990). This amendment and reauthorization of EAHCA, expanded a number of discretionary programs that had been authorized by prior enactments and changed its name. Additional

special education services were developed including social work, transition assistance, rehabilitation counseling and the use of assistive technology. IDEA outlined clear and rigorous expectations for school district staff that were working with the families of children with disabilities. In 1997 IDEA was reauthorized and added a substantial number of mandates dealing with student discipline. IDEA is currently undergoing another reauthorization process (NICHCY, 1996, pp. 11-12).

School board policies or rules related to student conduct – Any written, district wide, accepted student behavioral expectations and consequences, whether or not they are adopted as school board policy.

Weapon – "The IDEA incorporates the following definition of dangerous weapon: an instrument, material, substance, or device that is used for, or readily capable of, causing death or serious bodily injury, except that this does not include a pocket knife with a blade of less than 2 ½ inches in length" (Malony, 1998, p. 20).

IEP – Individualized Educational Program. An IEP is required for every student with disabilities. The IEP must include explanations of how the child's disability impacts school requirements and the accommodations to be made by school staff to compensate for the disabilities so the child can benefit from the educational experience, not necessarily perform at the same level as students without disabilities. An IEP is reviewed and updated regularly.

FBA – Functional Behavior Assessment. An FBA is "the process of collecting information and identifying functional relationships, methods and procedures to identify associations" (Hartwig, 2000, p. 5). The FBA is required if the school is

considering the removal of a student in a manner that "may constitute a change in placement" (Hartwig, 2000, p. 2). The purpose of the FBA is to:

- identify proactive strategies to prevent rather than suppress undesirable behaviors,
- develop an intervention that is logically related to functional categories, and
- teach replacement behaviors instead of suppressing through punishment (Hartwig, 2000, p.2).

BIP – Behavior Improvement Plan. The goal of a BIP is to "reduce or eliminate target behaviors" (Hartwig, 2000, p. 19). A committee that includes the parents and school staff determines the cause of the target behavior and steps to take to teach a replacement behavior that meets the child's needs but is acceptable in the school setting (Hartwig, 2000).

LRE - Least Restrictive Environment. This "is a rule of educating the student with other students who do not have disabilities (that is, in the general curriculum) to the maximum extent appropriate for the student with a disability" (Turnbull III, Turnbull, Sailor et al., 2003, p. 26).

AES – Alternative Educational Setting. An AES is an educational setting, separate from the general school population, in which the IEP of a student with disabilities can be implemented. An assignment to an AES is temporary and the goal is to reintegrate the student back into the general population as soon as feasible (Hartwig, 2000, p. 22).

PCSD – Pinellas County School District

PCSB – Pinellas County School Board

CMS - Charlotte-Mecklenburg Schools

IPS – Indianapolis Public Schools

Limitations of the Study

It was assumed for the purpose of this study that all educators in the three districts were committed to compliance with IDEA regulations and to providing the best educational environment possible for all students, disabled and non-disabled.

Where possible student discipline data were included. It was possible to obtain some data from Pinellas County, FL that was disaggregated by ESE and non-ESE. I was unable to obtain such data from the other districts. It would be improper to make assumptions about those statistics having any causal relationships to IDEA regulations or district practices. They were proffered only to provide a more expansive view of the school district in which they occurred. The discipline data that was collected is found in Appendix C.

Summary

Since 1965 legislators have attempted to craft laws designed to make public schools an accommodating environment for all students with disabilities. Although Congress initially made commitments that district compliance would result in federal funding of almost half of the costs of designated accommodations, most of those dollars remain elusive even in the face of ever increasing expectations. Educators employed in public school systems strive to remain true to the law while meeting other challenges

such as high stakes testing, severe budget cuts, private school vouchers and public fear due to greatly publicized school violence. Between these groups of well-intentioned individuals stand the students, disabled and non-disabled, needing education, protection and nurturing.

Organization of the Study

This study compares efforts to comply with IDEA regulations in the area of student discipline within three school districts.

Chapter one introduces the issues to be considered and includes a statement of the problem, purpose of the study, significance of the study, definition of terms, limitations of the study and organization.

Chapter two reviews related literature dealing with a historical view of public education and the child with disabilities, IDEA and student discipline and summaries of relevant case law and recent research.

Chapter three presents the methodology used in this study to examine data from the three selected school districts.

Chapter four sets forth information gleaned from interviews and reviewing documentation from the three districts including student discipline statistics and reflections of interested parties.

Chapter five contains a summary of findings, observations, conclusions, implications, and recommendations for further study.

Chapter Two

Review of the Literature

Introduction

The purpose of this collective case study was to examine perceptions of the implementation in three large, urban, public school districts of the 1997 IDEA mandates related to student discipline by reviewing their policies and procedures. This chapter provides a foundation for assessing the data collected in the school districts through a review of literature in the areas of (1) federal legislation, (2) the language of IDEA 1997, (3) the history of educating children with disabilities in America, (4) issues related to the discipline of students with disabilities in a public school setting, (5) minority overrepresentation, (6) relevant case law and (7) recent research.

From Federal Legislation to Classroom Procedure

A federal law (Act) is created through the Federal Legislative Process as follows:

A.
1. "Bill is introduced, numbered sequentially and referred to committee(s)…
2. Possible committee action on bill (most see no action unless a chair is sponsor/cosponsor)…
3. Bill is brought up by chamber leadership for floor action…The House or Senate considers, debates, amends and passes the bill…The 'engrossed' bill (now called an Act) as passed is printed in the Congressional Record.
4. Bill (Act) is referred to the other chamber…

5. Enrolled version of the bill (Act) prepared, signed and sent to the President. . Law becomes effective upon President's signature unless specified otherwise…" (McKinney and Sweet, 2003, pp. 1-2).

B. The Federal Act must then be interpreted by each state legislature and enacted as state statute ("How an Idea", 2003, p. 1).

C. Statutes are interpreted by state agencies such as State Departments of Education, which promulgate detailed guidelines for school districts in the state to follow when implementing laws. These are adopted by the State Board of Education as State Board Rules. Members of the State Boards of Education may differ from state to state and those guidelines are established in state statute ("North Carolina General Statutes", 2003, pp. 5-7).

D. Each local school board must enact policies that will implement the statutes in their state. That process is outlined in the Administrative Procedures Act, Chapter 5 ("Administrative Procedures Act", 2003, p. 2).

E. The staff in various departments within a school district often develop detailed procedures for use in individual schools and classrooms. These procedures are not usually adopted as school board policy and may be amended as needed, more quickly than a board policy since that process does not fall under the Administrative Procedures Act.

The Language of 1997 IDEA

"Team shall –

> (i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies including positive behavior interventions, strategies, and supports to address that behavior;" (IDEA, 1997, p. 53).

"Maintenance of Current Educational Placement. Except as provided in subsection (K) (7), during the pendency of any proceedings conducted to this section unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child" (IDEA, 1997, p. 61).

"(K) Placement in Alternative Educational Setting (AES)-

> …(1) Authority of school personnel…
>
> > …(i) to an appropriate interim alternative educational setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
> >
> > …(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if…

> (I) the child carries a weapon to school or to a school function…or…
>
> (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function" (IDEA, 1997, p. 61).

"(B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)…

> …(i) if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension…the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or…
>
> …(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior" (IDEA, 1997, pp. 61-62).

"(2) Authority of hearing officer…A hearing officer may order a change in the placement of a child with a disability to a more appropriate interim AES for not more than 45 days if the hearing officer…

(A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement…is substantially likely to result in injury to the child or to others…

(B) considers the appropriateness of the child's current placement;

(C) considers whether the LEA has made reasonable efforts to minimize the risk of harm in the…current placement, including the use of supplementary aids and services; and

(D) determines that the interim Alternative Setting…enables the child to continue to participate in the general curriculum…and to continue to receive those services and modifications…that will enable the child to meet the goals set out in…IEP…and include services and modifications designed to address the behavior…so that it does not recur" (IDEA, 1997, p. 62).

"Manifestation determination review

(A) If a disciplinary action is contemplated…for a behavior of a child with a disability…or if a disciplinary action involving a change of placement for more than 10 days is contemplated…

(i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and

…(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision…is made, a review shall be conducted by the IEP Team and other qualified personnel…

(c)…the IEP Team may determine that the behavior…was not a manifestation of the child's disability only if the IEP Team…in terms of the behavior subject to disciplinary action all relevant information, including…

(I) evaluation and diagnostic results…

(II) the child's IEP and placement; and

(ii) then determines that

…(I) in relationship to the behavior…the child's IEP and placement were appropriate and the special services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior…

(III) the child's disability did not impair the ability…to control the behavior" (IDEA, 1997, pp. 62-63).

"(5) Determination that behavior was not manifestation of the disability

(A)…the relevant disciplinary procedures applicable to children without disabilities may be applied…in the same manner in which they would be applied to children without disabilities except…" (IDEA, 1997, pp. 64-65) "…if the placement does not provide the…free appropriate public education…available to all children with disabilities…between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school" (IDEA, 1997, p. 26).

"(8) Protections for children not yet eligible for special education and related services.

(A) in general – A child who has not yet been determined to be eligible for special education…and who has engaged in behavior that violated any rule or code of conduct of the LEA…may assert any of the protections provided…if the LEA had knowledge…that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred" (IDEA, 1997, p. 65).

"300.755 Disproportionality

(a) General. Each State that receives assistance under Part B of the Act, and the Secretary of the Interior, shall provide for the collection and examination of data to determine if significant disproportionality based on race is occurring in the State or in the schools operated by the Secretary of the Interior with respect to –

(1) The identification of children with disabilities, including the identification of children with disabilities in accordance with a particular impairment described in section 602(3) of the Act; and

(2) The placement in particular educational settings of these children.

(b) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, in accordance with paragraph (a) of this section, the State or the Secretary of the Interior shall provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that the policies, procedures, and practices comply with the requirements of Part B of the Act (Authority: 20 U.S.C. 1418(c))" (Palolina, 2002, p1).

History of Educating Children with Disabilities in America

Responsibility for public education in America is, for the most part, relegated to individual states and school districts. Thomas Jefferson was the earliest American leader to broach the concept of public education. "He believed that education should be under the control of government, free from religious biases and available to all people irrespective of their status in society. Others who vouched for public education around the same time were Benjamin Rush, Noah Webster, Robert Coram and George Washington" (Thattai, 2001, p. 1).

In early America schooling was dealt with according to the standards and resources of communities and families. During the 1600's religious instruction was prevalent in the colonies of Connecticut, Massachusetts and New Hampshire since local communities in those areas consisted mainly of Puritans and Congregationalists. As people of other cultures, languages and faiths began to become part of these communities, there was a lack of common goals and private instruction emerged.

By 1791 seven of the fourteen states with constitutions of their own addressed education in those documents. At that point and until the mid 1800's educational efforts were largely to serve the wealthy. Even those efforts, however, were not consistent throughout the states.

Horace Mann promoted educational reform when he published the "Common School Journal" which finally put a discussion of educational issues into the hands of the reading public. By the end of the 19th century elementary education was ostensibly accessible to all American children, notwithstanding discrimination on the basis of race and gender. Massachusetts and New York led the country in the passage of compulsory elementary education laws and by 1918 all states had followed their lead. A 1925 Supreme Court case (Pierce v. Society of Sisters) established that children could attend private schools to comply with the legal requirement for attendance.

High school attendance was slower to become part of the country's culture. Boston Public Latin School was the first high school in 1635 followed by the American Academy, established by Benjamin Franklin in 1751. Student population in American elementary and secondary schools would more than double, from ten million to over twenty million during the forty years between 1880 and 1920 bringing greater diversity

into the schools. The number of American adolescents graduating from high school increased from 6% to 85% from 1900 to 1996 and school attendance is currently compulsory to at least age 16 in most states (Thattai, 2001, pp. 4-10).

Schools mirror to some extent and are strongly impacted by the social and political events occurring in the community. To this end, educators have stressed progressive education (1920's and 30's), increased intellectual discipline (1950's) and curriculum development (1960's). Interestingly though, since the mid 1950's, discrimination issues have replaced knowledge and methodology as the prime educational focus in America (Longmore, 2001, pp. 189-190).

Brown v. Board of Education of Topeka (1954) was the Supreme Court case that led to a ruling that the segregation of schools by race was unconstitutional.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. 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 of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> -FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, RATIFIED IN 1868

> We conclude that, in the field of public education, the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others

> similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.
>
> -CHIEF JUSTICE EARL WARREN, *BROWN V. BOARD OF EDUCATION*, 1954

In January of 2004 U.S. Secretary of Education Paige spoke to The American Enterprise Institute about the 50th Anniversary of Brown v. Board or Education and its impact on American education. Secretary Paige (2004, p. 3) spoke of schools as "the front lines of the battle for civil rights." Secretary Paige stated,

> Two score and ten years have passed since Brown and it may take generations to finally achieve equality of opportunity. But we must make our schools equitable in order to make our society and culture equitable. Because our schools are the leading indicators of our social problems, our public schools not only serve the public, they, in many ways, create the public" (Paige, 2004, p. 8).

In 1972 educational institutions receiving financial aid were forbidden to discriminate on the basis of gender by Title IX and thus, another subgroup within our population was protected. The reauthorization of IDEA in 1997 expanded protection establishing broad procedural safeguards to be followed by public school educators (Thaittai, 2001, pp. 20-22). Currently, the federal "No Child Left Behind" plan establishes clear, but daunting, educational targets for all public school students to be reached by 2014.

Education of the Student with Disabilities

Addressing the issue of students with disabilities, Barry Franklin states that,

> "During the years from the mid-eighteenth century through the end of the nineteenth century, the way in which Western intellectuals, including Americans, understood deviance would undergo a fundamental transformation. What was thought at the beginning of this period to represent explicit and willful recalcitrance on the part of individuals requiring coercive punishment, came to be viewed as implicit and unintentional behavior requiring therapy of one sort or another. What was once characterized as criminal, came to be seen as illness. This shift, which we can describe as the medicalization of deviance, would have an impact on a wide array of problems related to social control. One such problem was the management of children…Because of this transformation in our thinking about deviance, schools would begin by the turn of the twentieth century to accept responsibility for children with learning difficulties and other types of low achievement…In attempting to deal with growing numbers of children, including children with learning difficulties, early twentieth-century school managers were immediately faced with the task of reconciling their changed circumstances to an existing educational system

> that was ostensibly committed to the ideal of common schooling" (Franklin, 1994, pp. xii-xiii).

Children who were blind, deaf or physically disabled were the first to have special schools and classes although in 1896 there was a class developed in Providence, Rhode Island for those termed 'backward' children. Special classes not only served the unique needs of the targeted students but also, according to 1916 Atlanta Superintendent Landrum, "helped the regular classroom by allowing the teacher to do more effective work with the normal children" (Franklin, 1994, p. 7). In 1907 Milwaukee's Superintendent Pearse reported to colleagues at the forty-fifth annual meeting of the National Education Association that the special classes and schools would, "save these children from themselves" and "save the state from the harm that they might bring to the schools" ("Schools for Defectives", 1907, p. 116).

Franklin sets forth the premise that the medicalization of deviance or mental hygiene movement caused the opening of public schools to medical professionals and eventually, led to the establishment of guidance counseling, social work and school psychology as standard school functions. Whereas behavior deviant from the mainstream once led to punishment and exclusion it was now being seen as an educational problem to be accommodated (if not corrected) within the public school setting.

Who should be assigned to emerging special schools and classes was already an issue in 1906 when Detroit's Superintendent of Schools addressed the local School Board as follows:

> "A more definite line of demarcation must be drawn between those low grade imbeciles known as backward, and those of

> higher mentality, also known as backward, who are eliminated from the regular grade. The low grade cases and those bordering on low grade must be separated from those children of possibly less than normal mentality who are also known as backward, because they are unable to advance in one or more of the regular subjects. If this is not done, the parents of the latter class will finally refuse to send their children to these rooms and who can say they will not be justified" (Detroit Board of Education, 1907, p. 75)?

From a time when there appeared to be primarily levels of backwardness, educators, with the assistance of the medical profession began to expand the categories within which children were grouped. The 1957 Minnesota legislature broadened its exceptional education statute mandating that public schools serve students who were educably mentally retarded, blind, deaf, speech impaired and orthopedically handicapped. Their definition of educably mentally retarded included students with below 80 I.Q.'s as well as those who were emotionally disturbed and children who presented particular conduct problems or needed special education for another, unspecified reason (Franklin, 1994, p. 146).

In 1975, Public Law 94-142 promised <u>all</u> children with disabilities a free, appropriate public education. Much of the dialogue surrounding that enactment centered on the education of children with disabilities in the least restrictive environment. Franklin states, however, that, "Although this provision did appear to greatly restrict the ability of school managers to remove handicapped children from regular classrooms, it

did not abolish segregated placements…Public schools under this provision were to place disabled children in environments that provided them with an appropriate education while maximizing their contact with their non handicapped peers. For many children with disabilities, the least restrictive environment was the regular classroom. For others, however, it was a separate classroom or school or even a residential setting" (Franklin, 1994, p. 147). Franklin further reports,

> "In 1976, the year before P.L. 94-142 was implemented, about sixty-seven percent of all handicapped children and about eighty percent of learning disabled children spent some time…in regular classrooms. Six years later, in 1982, the percentages were virtually unchanged" (Franklin, 1994, p. 147).

It would seem that PL 94-142 was having little impact on the decisions being made by educators regarding student placement of students with disabilities.

Identification of Students with Disabilities

Overlaid on the least restrictive environment issue is an ongoing controversy about which children are identified for special education classes. Gottlieb and Weinberg (1999) conducted a study of differences between students not referred to exceptional education classes and those who were. They found, in part, the following:

1. Referred students' families were more transient than those of nonreferred students.
2. Most of the referred students in the study were referred because of misbehavior and poor academic progress, particularly a lack of willingness to learn.
3. Referred students were late for school strikingly more often than were nonreferred students.
4. A small percentage of the teachers in the study referred the majority of the students.

The authors believe that the results of this study imply a need for comprehensive training of teachers in a variety of prereferral interventions that might reduce the need for referrals for special education - particularly in regard to behavior management and increasing the variety of instructional strategies teachers have at their disposal - and that this training should be especially targeted to teachers who make multiple referrals (Gottlieb and Weinberg, 1999, pp. 187-199).

Discipline of Students with Disabilities in Public Schools

As federal law has broadened the rights of the child with disabilities and his family, it has narrowed the discretion of the educational manager or school administrator. A 2000 Florida Department of Education Technical Assistance Paper states,

> "Maintaining discipline in today's schools is a challenge for the school personnel. They must attempt to achieve a balance between a student's educational needs and the accountability and consequences essential to ensure a safe and productive learning environment. This balance becomes more difficult to achieve when the student in question has disabilities, since the right of a student with disabilities to a free appropriate public education (FAPE) may conflict with the suspensions and expulsions typically used to discipline students for inappropriate behaviors. Under certain circumstances, suspensions or expulsion may be considered a change in placement for the student that may be made only as part of the individual educational plan (IEP) process. Whether certain disciplinary actions (e.g., suspension) constitute a change in placement under IDEA '97 depends on the length of the proposed removal and whether or not the behavior being considered for discipline is a manifestation of the student's disability. Determination of manifestation must be made on an individual basis and not on the basis of a broad classification or

the general characteristics of a disability" ("Manifestation of the Disability", 2001, p.1).

A question and answer section from the same Technical Assistance Paper answers for the administrators such questions as, "For purposes of determining whether a suspension (or pattern of suspensions) exceeds 10 school days, what is a day" ("Manifestation of the Disability", 2001, p. 4)? and defines in detail the Manifestation Determination Process as follows:

> "Definition of Manifestation of the Disability:
>
> A misbehavior is considered a manifestation of the student's disability if there exists a causal relationship between the disability and that behavior. A manifestation determination must be made any time school officials are considering a disciplinary change of placement for a student with a disability, such as suspension. The manifestation determination must be made on a case-by-case (individual incident) basis, in light of the circumstances and particular facts and not on the basis of the disability category or label (e.g., learning disabilities, emotionally handicapped). In defining a relationship between misbehavior and the disability, the issue of whether the misconduct was the result of the student's educational placement and services must also be addressed.
>
> If the inappropriate behavior is determined to be a manifestation of the disability, additional assessments, interventions,

> alternative programming, and other supports and resources must be considered by the IEP team. Likewise, if the inappropriate behavior is determined to be a result of any deficiencies in the student's IEP or current educational placement or in their implementation, the school district must remedy the deficiencies immediately" ("Manifestation of the Disability", 2001, p. 3).

University of Memphis Professor Nathan Essex (1999, pp. 40-42), outlined the following guidelines for meeting the educational needs of student with disabilities while protecting their rights:

- "Don't discipline a student for behavior clearly linked to the student's disability.
- Understand that the school district bears the burden of proving whether the misbehavior is (or isn't) a manifestation of the student's disability.
- Know and carefully adhere to all procedural protections.
- Keep in place a broad range of placement options for disabled students.
- Maintain a close and positive relationship with parents so they can be involved in every decision made regarding their disabled child."

According to Technical Assistance paper FY 2001-7D drafted by the Florida Department of Education:

> "Four basic themes should guide action related to discipline:
>
> - All students, including students with disabilities, deserve safe, well-disciplined schools and orderly learning environments.

- Teachers and school administrators must have the tools and supports they need to assist them in preventing misconduct and discipline problems and to address these problems if they arise.
- There must be a balanced approach to the discipline of students with disabilities that reflects the need for orderly and safe schools and the need to protect the right of students with disabilities to FAPE.
- Appropriately developed IEP's with well-developed behavior intervention strategies decrease school discipline problems" ("Manifestation of the Disability", 2001, p. 2).

With regard to discipline for students with disabilities, IDEA '97 does the following:

- "delineates the requirements for dealing with a student with disabilities who is subject to disciplinary action and clarifies for school personnel, parents, students, and others how school disciplinary rules and the obligation to provide FAPE fit together by providing specificity about important issues such as whether educational services can cease for a student with disabilities, how manifestation determinations are made, what happens to a student with disabilities when the parent appeals the decision, and how to treat a student not yet identified as having a disability.

- includes the regular education teacher of a student with a disability in the student's IEP meetings to help ensure that the student receives appropriate accommodations and supports within the regular education classroom and gives the regular education teacher an opportunity to better understand the student's needs and what will be necessary to meet those needs, thus decreasing the likelihood of disciplinary problems.
- allows school personnel to move a student with disabilities to an interim alternative educational setting for up to 45 days, if that student brings a weapon to school or a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.
- provides an alternative to seeking a court injunction by asking an administrative law judge to move a student with disabilities to an interim alternative educational setting for up to 45 days if that student is substantially likely to injure himself or herself or others in the current placement" ("Manifestation of the Disability", 2001, pp. 2-3).

Wright is a school psychologist, behavior analyst and trainer for California. During a 2002 conference Wright explained the shift in understanding about behavior made necessary by the 1997 IDEA reauthorization as follows:

A. Past Practices: Students may need Behavior *Management*

   Current Practice: Students may need Behavior *Support*

   What's the difference? Behavior *Management* focuses on consequences, positive or negative. Behavior *Support* "implies addressing environment, teaching strategies, teaching new behaviors and using positive reinforcement strategies" (Wright, 2002, p. 20).

B. Past Practices: Behavior Management Plans – again, focused on consequences (Positive for acceptable conduct and negative for the opposite)

   Current Thinking: Behavior Support Plans – strategies designed to help those involved understand the needs met by the offending behavior and how to meet those needs in a more acceptable way.

   What's the difference? The management plans aim at short-term goals while the support plans may permanently improve behavior.

C. Past Practices: There was an attempt to make the consequences so unpleasant that the student would stop the offending behavior or the positive reinforcement so intensely pleasurable that the acceptable behavior would be selected consistently.

   Current thinking: Look for the "trigger" or antecedent to the offending behavior and change the environment to eliminate that factor.

   What's the difference? Again, altering the environment should lead to longer lasting change.

D. Past practice: was based on the philosophy that negative behavior had to be controlled or eliminated.

Current thinking: Students need to be taught positive behavior in an environment in which such behavior is modeled.

Again the difference should be lead to a more lasting change (Wright, 2002, pp. 20-23).

Minority Overrepresentation

"American society has experienced tremendous change in its racial profile, more than ever before, students in today's schools come from a variety of racial, ethnic, experiental and linguistic backgrounds. Projections of the United State population into the 21st century indicate that…by the year 2020 the majority of school-aged children in the United States will be from ethnic minority groups, either African American, Hispanic, Asian American/Pacific Islander or American Indian" (Daugherty, 1999, p. 1).

"Concern about disproportionate representation of ethnic and culturally diverse students in special education was first raised by civil rights advocates, educators, administrators and policy makers who found it perplexing and disturbing that children from ethnic minority backgrounds and those with limited English proficiency were overrepresented in classes for the mentally retarded (Harry, 1994). This phenomenon was first addressed by the educational research community in 1968 by Dunn, who documented disproportionate numbers of African American, American Indian, Mexican, and Puerto Rican students in classes for the mildly mentally retarded in California (Harry, 1994). Disproportionate placement was attributed to discriminatory assessment practices

such as use of the IQ score as the sole criterion for diagnosing mental retardation. Legal battles in the 60's and 70's erupted, including a myriad of class action suits in California such as Johnson v. the San Francisco Unified School District and the widely publicized Larry P. v. Riles in 1971. The former case charged that special education was a cover for segregation, while the latter was the first in a series of cases alleging cultural bias in assessment. The class action suit of Diana v. the California State Board of Education in 1970 charged linguistic bias in assessment, resulting in requirements that students be tested in their primary language or with sections of tests that do not depend on knowledge of English.

The landmark court cases of the 70's found many of the public schools' assessment practices wanting, giving impetus to the mandate for nondiscriminatory assessment procedures in the civil rights legislation of Section 504 of the Rehabilitation Act of 1973. These cases were extremely influential in shaping Part B requirements for nondiscriminatory testing and classification, and the procedural or due process safeguards against misclassification in the passage of the Education for All Children Handicapped Act of 1975 (P.L. 94-142). At the same time, gaining wide acceptance and incorporated under IDEA-Part B was the definition of mental retardation as *concurrent deficits* in general intellectual functioning, adaptive behavior and school performance"(Reschly, Kicklighter & McKee 1988) cited by Daugherty (1999, pp. 1-2).

It is evident that "The disproportionate representation of minority students in special education has been an important and persistent topic almost since the inception of special education. In an attempt to assess and remediate the problem…IDEA 97 mandated new state reporting requirements concerning minority enrollment in special

education and the suspension and expulsion of students with disabilities. These new requirements make the issue of overrepresentation and school discipline a very practical issue for state departments of education. How should disproportionality be measured? What constitutes disproportionality?" (Skiba, Chung, Wu, et al., 2000, p. v). At the time IDEA 1997 "was passed. Congress found that minorities are 2.3 times more likely to be so labeled when compared to whites nationally" (Losen, 2000, p. 263). With regard to school discipline, Dr. Brenda Townsend defines disproportionality as follows: "African American students would be expected to be suspended or expelled disproportionately if the frequency with which they receive punitive consequences is greater than their percentage in the population by 10% or more. For instance if African Americans compose 20% of the school age population, approximately 18% - 22% of the suspensions might be expected to be imposed on African American students. When African American students are suspended more than 22% of the time, they are disproportionately suspended" (Townsend, 2000, p. 394-385). The same definition may be applied to assignments to special education programs.

A study by the National Association of State Directors of Special Education (NASDSE) outlined "state criteria for determining disproportionality. According to this report, 29 states have specific criteria, but the techniques vary among them" (Paolino, 2002, p. 2). Two of the states addressed in the NASDSE study and included in Paolino's article were:

> "Florida: Florida's administrative code (6A-19 Education Equity defines educational equity in this way: 'All guidance, counseling, financial assistance, academic, career and vocational programs, services and

activities offered by each institution shall be offered without regard to race, sex, national origin, marital status or handicap. There shall be no discrimination in recreational, athletic, co-curricular or extracurricular activities.'

The code specifically addresses policies concerning guidance counseling. It prohibits counselors to steer students into or away from specific programs, activities or careers based on race, sex, national origin, marital status or handicap. Counselors are required to communicate effectively with hearing impaired and limited English language students using an interpreter, if necessary. Guidance and counseling materials must be reviewed and updated to meet the requirements outlined above.

If appraisal instruments are employed, they also must be reviewed, updated or replaced if necessary so no discrimination results from administering. All students must be appraised using the same testing instruments unless application of different instruments is shown to be essential in eliminating existing biases.

The code addresses institutional activities of school officials, administrative staff and students. All activities must be inclusive and not discriminate on the basis of race, sex, national origin, marital status or

handicap. Student recruitment activities are expected to follow these requirements…

North Carolina: North Carolina's Administrative Code (Title 16, r. 6D.0106) prohibits local education agencies from assigning or excluding students from special education programs or gifted and talented programs based on a student's limited English proficiency. Their administrative code also allows for teacher training to 'gain an understanding of and develop strategies for addressing the educational needs of limited English proficient students'" (Paolini, 2002, p. 3).

"The (Florida) State Department of Education has targeted 14 school districts…that have too many minority students in mentally disabled classes, said DOE spokesman Adam Shores" (Weber, 2002, pp. 1-4). Pinellas is one of the 14 school districts on the list (Weber, 2002, p. 3). "School officials say better tests are now used to identify students who need to be in special classes…they agree that poverty is the biggest factor in children's lagging performance and a much larger percentage of minorities are poor" (Weber, 2002, p. 3).

The Charlotte Mecklenburg School District "has identified the disproportionate representation of minority students in special education classes as a targeted area for change. The district is seeking interventions for the disproportionality problem that is primarily emanating from referrals for behavior issues" ("Elementary and Middle Schools", 2003, p. 1).

In a report presented to the Indiana Department of Education, Division of Special Education during August 2000 researchers from Indiana University studied data from all of the Indiana public school districts for the 1998-99 school year. The report is titled *Minority Overrepresentation in Indiana's Special Education Programs, A Status Report.* These researchers concluded that "enrollment in special education across the state of Indiana do not indicate significant minority disproportionality at the level of overall special education enrollment. Yet looking more specifically at specific disabilities indicates significant disproportionality in several disability categories. African Americans are significantly overrepresented in the categories of Mild Mental Handicap, Emotional Handicap, Moderate Mental Handicap, and Severe and Profound Mental Handicap. Hispanic and American Indian students were overrepresented in Severe and Profound Mental Handicap. These results mirror previous research…in finding that the most significant disproportionality appears to occur in the areas of emotional handicap and mental handicap, and is most severe for African American students…Given the increased importance in IDEA 97 on service in the least restrictive environment, this report also looked at the possibility of disproportionality in special education placement. African American, Hispanic, and American Indian students were underrepresented in regular class placement, and African Americans were significantly overrepresented in a number of more restrictive settings, particularly separate class" (Skiba, Chung, Wu, et al., 2000, p. 12). While fourteen districts in the state appeared to have overrepresentation in overall special education programs during 1998-1999, Indianapolis Public Schools was not in that group of identified districts with 58.12% of their general enrollment represented by African American students and 55.63% of their special education

enrollment represented by African American students (Skiba, Chung, We, et al., 2000, p. 20).

A common thread running through the literature surrounding the overrepresentation of minority students in special education programs is the understanding that many referrals are predicated by behavioral concerns (Paolini, 2002, p. 2). While poverty is often recognized as a causal factor in the disproportionate referrals to special education programs and for disciplinary consequences others just as significant may be "a cultural divide that exists between contemporary African American students and their teachers…, cultural conflicts…exist between African American students' culture and schools' mainstream culture…, and…verbal and nonverbal language differences may create additional opportunities for cultural conflicts and misinterpretation" (Townsend, 2000, pp. 383-384).

"Remedies to correct the disproportionate numbers of minorities in special education are likely to be varied and dynamic. Remedies that work for one state may not work for another" (Paolino, 2002, p. 3). Some common components however, might be:

1. "*Increased and Improved Monitoring:* Require specific and proven collection and analysis techniques for districts to employ. Districts will need training in how to collect and analyze these data so the numbers reported accurately represent each district's circumstances.
2. *Teacher Training:* As part of state licensing requirements, prepare teachers for a culturally diverse population of student, including ongoing professional development courses.

3. *Early Identification:* Monitor whether or not early screenings and interventions are taking place. Early intervention strategies provide an opportunity for general educators to reduce special education referrals and to help children succeed in the classroom.
4. *Improved instructional Materials:* Require the use of instructional materials proven to be effective with students who are learning disabled. Administering materials based on research have been proven to help learning-disabled students assess the general curriculum.
5. *Implement "Rule Replacement" Programs:* Programs centered around quality indicators associated with successful interventions allow school districts to implement special education systems that do not require labeling a child learning disabled. More time could be spent on successful intervention instead of the eligibility process.

This list is not exhaustive, but highlights some common policy themes in the research literature. To remedy disproportion requires more than mere identification. Finding and using sound research-based strategies will help every child reach full potential" (Paolini, 2002, pp. 3-4).

Relevant Case Law

Free and Appropriate Public Education (FAPE)

- Board of Education of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1982)

Amy R. was a student in kindergarten who was deaf but was a skilled lip reader. She attended kindergarten in a regular classroom in a welcoming school, whose administrators learned sign language in preparation for her arrival. She was provided an FM hearing aid. Amy was successful in kindergarten and was promoted.

Amy's first grade IEP again placed her in a regular classroom, continued her use of the FM hearing aid, provided a tutor for the deaf one hour per day and also three hours of speech per week. While the parents agreed with these plans, they also wanted a sign language interpreter in all of Amy's classes.

The district court decided that, although Amy was doing well, she still was not "learning as much as she would if she were not disabled" (Weatherly, 2002, p. 3) and therefore was not receiving FAPE without the full time sign language interpreter. The Second Circuit Court of Appeals affirmed the decision.

The Supreme Court, however, took a different position. The justices interpreted Congress' intent in writing IDEA mandates to be focused on opening the door of public education to students with disabilities. "Congress did not impose upon the States any greater substantive educational standard than would be necessary to make such access meaningful"(Weatherly, 2002, p. 4). The decision stated that as long as the State provided individualized instruction and enough support for the child to benefit academically in that environment, FAPE was satisfied. One important factor in determining academic benefit was passing grades and promotion to the next level in the case of a student with a disability in the regular classroom.

The court suggested that, when attempting to determine what level of accommodation was sufficient, a two-pronged approach should be used. First, has the

State complied with IDEA mandates? Secondly, is the IEP structured so the student will "receive educational benefits?" (Weatherly, 2002, p. 5)

According to Dowling-Seadon, an attorney in North Carolina, "the word 'appropriate' in the phrase 'to the maximum extent appropriate' reflects Congress' strong preference for mainstreaming, but its intent is to defer to public school officials in applying that preference to individual children" (Dowling-Seadon, 1998, p. 14).

- Hartmann v. Lawdoun County Board of Education

Dowling-Seadon discusses this case involving the placement of an eleven-year-old student with autism. After being mainstreamed for a period of time and failing to make academic progress, the IEP team changed his placement to a more restrictive and better supported site. The parents sued claiming a violation of the IEP because their child was not being mainstreamed "to the maximum appropriate level" (Weatherly, 2002, p. 7).

The federal district court set aside the evaluations and judgments of the educators and ruled in favor of the parents. That ruling, however, was reversed by the 4th Circuit Court. Their decision included the remarks that the federal judge had stepped into the role of an educator and that was not the intent of IDEA.

Manifestation Determination

In a 2001 Phi Delta Kappan article, Zirkel (pp. 478-479) outlines a Wisconsin case wherein a high school student who had been identified as having specific learning disabilities committed extensive vandalism at his school. The school district moved to expel the student and the behavior was found NOT to be a manifestation of his identified disability. The parent filed for a due process hearing and sought outside testing. The

community psychologist diagnosed Attention Deficit Disorder and depression and stated that the vandalism was a manifestation of those disabilities.

The Hearing Officer ruled in favor of the parent and the district appealed to federal court but was defeated again. Part of the judge's explanation was that the 1997 IDEA reauthorization allows for consideration of not yet identified disabilities (Zirkel, 2001, pp. 478-479).

- Poteet Independent School District, (Texas) 29 IDELR 423 (SEA TX, 1998)

> "Petitioner asserted that the behavior intervention plan developed for Rudy in January 1998 was not fully implemented. The BIP contains the requirement: 'Find support person for Rudy to talk to when he is oppositional.' None of the school administrators and teachers at the hearing knew the identity of the support person, except that Mary Killian, the educational diagnostician, assumed it was the high school counselor. A specific support person should be named and that person's identity should be made clear to all teachers and administrators involved with Rudy. However, it was not shown that this omission affected Rudy's truancy or his possession of marijuana. Also, in spite of the omission, his non-compliant behavior in class actually improved during the spring semester of 1998…
>
> Rudy can be disciplined for possession of marijuana in the same manner as a non-disabled student because his behavior was not

> a manifestation of his disability, but he must receive FAPE in the alternative placement…
>
> Poteet Independent School District did not violate the stay-put provision by failing to return Rudy to his regular placement until after the expiration of 45 days of placement at the alternative campus, even though the parent had filed a request for due process" (Ruesch, 2002, p. 6).

Stay-Put

- Honig, California Superintendent of Public Instruction v. Department of Education ET AL. Certiorari to the United States Court of Appeals for the Ninth Circuit, 484 U.S., 305 (1998)

Two students with emotional handicaps (Doe and Smith) were suspended for an indefinite length of time pending their expulsion subsequent to disruptive and violent acts that were related to their disability. Doe filed suit against school district staff and the State Superintendent and was joined by Smith. They alleged that the planned expulsion and the extended suspension were a violation of the Education of the Handicapped Act (EHA). The federal district court entered summary judgment for the respondents and issued a permanent injunction. The Court of Appeals affirmed with modifications and the district appealed to the United States Supreme Court.

Justice Brennan delivered the opinion of the Court, which held that:

1. Doe was removed from the case since, by 1998, he was 24-years-old and the EHA applies to individuals between the ages of 3 and 21. Smith, at

20, had not completed high school (although he was not attending). "This court has jurisdiction since there is a reasonable likelihood that Smith (484 U.S. 305,306) will again suffer the deprivation of EHA – mandated rights that gave rise to the suit. Given the evidence that he is unable to conform his conduct to socially acceptable norms, and the absence of any suggestion that he has overcome his behavioral problems, it is reasonable to expect that he will again engage in aggressive and disruptive classroom misconduct. Moreover, it is unreasonable to suppose that any future educational placement will so perfectly suit his emotional and academic needs that further disruptions on his part are improbable. If Smith does repeat the objectionable conduct, it is likely that he will again be subjected to the same type of unilateral school action in any California school district…in light of the lack of a statewide policy governing local school response to disability related misconduct, and petitioner's insistence that all local school districts retain residual authority to exclude disabled children for dangerous conduct. In light of the ponderousness of review procedures under the Act, and the fact that an aggrieved student will often be finished with school…by the time review can be had in this Court, the conduct…by the petitioners is…capable of repetition, yet evading review. Thus his EHA claims are not moot" ("Honig v. Doe", 1988, p.1).

2. "The 'stay-put' provision prohibits state or local authorities from unilaterally excluding disabled children from the classroom for dangerous or disruptive conduct growing out of their disabilities during the pendency

of review proceedings. Section 1415 (e) (3) is unequivocal in its mandate that 'the child shall remain in the then current educational placement', and demonstrates a congressional intent to strip schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school. This Court will not rewrite the statute to infer a 'dangerousness' exception on the basis of obviousness or congressional inadvertence, since, in drafting the statute, Congress…" made it clear "…that the omission of an emergency exception for dangerous students was intentional. However, Congress did not leave school administrators powerless to deal with such students, since implementing regulations allow the use of normal, non placement-changing procedures, including temporary suspension for up to 10 school days for students posing an immediate threat to others' safety, while the Act allows for interim placements where parents and school officials are able to agree, and authorizes officials to file a 1415 (e) (2) suit for 'appropriate' injunctive relief where such agreement cannot be reached. In such a suit, 1415 (e) (3) effectively creates a presumption in favor of the child's current educational placement which school officials can rebut only by showing that maintaining the current placement is substantially likely to result in injury to the student or to others…

3. Insofar as the Court of Appeals' judgment affirmed the District Court's order directing the State to provide services directly to a disabled child

where the local agency has failed to do so, that judgment is affirmed by an equally divided Court" ("Honig V. Doe", 1988, pp. 1-2).

Brennan's opinion includes the following statements:

- "When the law (EHA) was passed in 1975, Congress had before it ample evidence that such Legislative assurances were sorely needed" ("Honig v. Doe", 1988, p.2).
- "Among the most poorly served of disabled students were emotionally disturbed children: Congressional statistics revealed that for the school year immediately preceding passage of the Act, the educational needs of 82 percent of all children with emotional disabilities went unmet…" ("Honig v. Doe", 1988, p. 2).
- "…the EHA confers upon disabled students an enforceable substantive right to public education in participating States…
- …The 'stay-put' provision at issue in this case governs the placement of a child while these often lengthy review procedures run their course…
- …Our conclusion that 1415 (e) (3) means what it says and does not leave educators hamstrung…" ("Honig v. Doe", 1988, pp. 2-9).

Martin (1999) reported to attendees of the 20th National Institute on Legal Issues in Educating Individuals with Disabilities, about injunction requests that occurred subsequent to the Honig decision. Included were:

- Walton Central School Dist. (New York), 28 IDELR 597 (N.D.N.Y. 1998): granted an injunction to the school district for the removal from an

education setting of a student with a history of assaulting staff and other students.

- School Dist. of Philadelphia v. Stephan M., 25 IDELR 506 (E.D. Pa. 1997), The injunction was denied.
- Phoenixville Area School Dist. (Pennsylvania), 25 IDELR 452 (E.D. Pa 1997): the injunction was denied because there was no evidence that previous assaults by the student had caused injuries (Martin, 1999, pp. 1-37).

Alternative Education Setting (AES)

If a student with disabilities is moved into an AES for 45 days the IEP must be fully implemented. IDEA regulations mandate that the AES shall:

1. "be selected so as to enable the child to continue to participate in the general curriculum…and to continue to receive those services and modifications…that will enable the child to meet the goals set out in that IEP and
2. include services and modifications designed to address the behavior…so that it does not recur" (Martin, 1999, p. 15).

Case law related to AES placements include:

- Board of Education of the Akron Central School Dist. (New York), 28 IDELR 909 (SEA NY 1998: Home instruction was found by a New York administrative law judge to be an inappropriate AES for a student who

brought marijuana to school because special education services that were in the student's IEP before the offense were not provided.

- Freeport Public Schools (Maine), 26 IDELR 1251 (SEA ME 1997): A student who brandished a knife at school was provided 2.5 hours of tutoring each school day at a public library. The Maine Administrative Law Judge ruled that the AES was only partially acceptable because all services and accommodations (particularly those designed to address behavioral issues) were not being implemented.
- Oconee County School System (Georgia), 27 IDELR 629 (SEA GA 1997): An ADHD student came to school with a shotgun and was provided two hours of service per school day during the 45 day removal. "The Administrative Law Judge ruled for the district when the parents failed to object to the AES educational program and focused only on attacking the manifestation determination – a crucial strategic error" (Martin, 1999, p. 17).

Personnel

A teacher in a Texas public school serving only students who were severely emotionally disabled (SED) also drove the school bus. The teacher-driver documented the students' conduct on the bus, which, not surprisingly, was consistently disruptive and aggressive. The teacher had requested that a monitor be hired to ride the bus but that step was not taken. At one point he had to call 911 for assistance with the students.

When one of the students sprayed the driver with a fire extinguisher during rush hour traffic he managed to maneuver the busload of children to safety but "suffered permanent injuries including asthma and reactive airways disease, rendering him unable to teach or drive a bus" ("McKinney et al v. Irving", 2002).

The teacher filed suit against the district claiming they had created a dangerous situation by segregating students with severe emotional disabilities into one school and not providing a monitor on the bus and should have foreseen such a situation. McKinney "…added claims under 42 U.S.C. 1983 based on a 'state-created danger theory', as well as state law claims for negligence and damages under the Texas Tort Claims Act. The court entered judgment for the district, and McKinney appealed.

The United States Court of Appeals for the 5th Circuit observed that it had never recognized liability for the actions of private parties like students and declined the teacher's suggestion to impose liability on the district" ("McKinney et al v. Irving", 2002).

This decision reflected the court's belief that it was not the district that created the danger but the individual students and that the presence of a monitor on the bus would not have guaranteed that the fire extinguisher situation could not occur.

According to the January, 2003 issue of Legal Notes For Education

> "Districts are rarely liable for injuries caused by private parties, the court said, and the teacher failed to show that the district was deliberately indifferent to his requests for a monitor to help supervise students" ("McKinney et al v. Irving", 2002).

Recent Research

During a 2001 study conducted by the United States General Accounting Office, 465 middle and high school principals were surveyed about their perception of the impact of the 1997 IDEA disciplinary provisions on student discipline in their school. The report found that the 272 administrators who responded said that "IDEA plays a limited role in affecting schools' ability to properly discipline students" (Fine, 2001, p. 2). Data collected reflected "About two-thirds of all students who engage in serious misconduct…are given out-of-school suspensions, regardless of whether they are in special education programs or not" (Fine, 2001, p. 1). Administrators reported that the suspensions were of equal length for both groups of students and educational services during the suspension were provided to fewer than half of the affected students.

"About 86 percent of the schools responding to the survey operate under their own policies for disciplining special education students" and "generally rated their schools' special education discipline policies…as having a positive or neutral effect of school safety and orderliness" (Fine, 2001, p. 2). However, "27 percent of principals said that a separate discipline policy for students in special education is unfair to other students. About 20 percent…believe that discipline under the IDEA is burdensome and time-consuming" (Fine, 2001, p. 3). Fine reported that, while special education advocates welcomed that results of the study, a representative of the American Association of School Administrators "said the study's results were not consistent with what he hears from his group's members" (Fine, 2001, p. 2).

The Civil Rights Project at Harvard University reported on a study conducted that dealt with over representation of African American students in American special

education programs. Researchers concluded that although the passage of IDEA has helped "approximately six million children with disabilities enjoy their right to FAPE…the benefits…have not been equitably distributed" ("Civil Rights Project", 2002, p. 1). The study concludes, "Once identified, most minority students are significantly more likely to be removed from the general education program and be educated in a more restrictive environment" ("Civil Rights Project", 2002, p. 1). Other findings in the study included:

- "Disturbing racial disparities are found in outcomes and in rates of discipline…
- The process of identification and placement is rife with subjectivity…
- The theory that poverty can explain overrepresentation in mental retardation or emotional disturbance is contradicted by national trends revealed by the data…
- The research suggests that the observed racial, ethnic and gender disparities are the result of complex and interacting factors including: unconscious racial bias on the part of school authorities, large resource inequalities…unjustifiable reliance on IQ and other evaluation tools; educators' inappropriate response to the pressures of high-stakes testing; and power differentials between minority parents and school officials" ("Civil Rights Project", 2002, p. 3).

Recommendations by the Harvard researchers were:

- "Require data collection and public reporting from every school and district…

- Ensure accountability where disparities are significant…
- Boost the power of parents to seek remedies…
- Guarantee that states receive adequate funding" ("Civil Rights Project", 2002, p. 3).

Researchers concluded, in part, that "There are no quick fixes" ("Civil Rights Project", 2002, p. 4).

A Washington D.C. Think Tank met in 2002 to look at the link between research about student disciplinary practices in schools and actual practice. The October, 2002 meeting "was intended to be a step toward bridging the gap between research and practice on an issue that teachers and parents alike see as a top concern. Conference organizers noted, for example, that more than three-quarters of adults surveyed for this year's Phi Delta Kappa/Gallup Poll on education cited a lack of student discipline as either a 'very serious' or 'somewhat serious' problem" (Viadero, 2002, p. 1). Dr. Sheppard Kellam, from the Johns Hopkins University's Boarding School of Medicine presented to the group his own longitudinal study, conducted in the 1980's. "As part of his study program…1st graders in 18 schools were randomly assigned to classrooms and tracked through middle school.

> The researchers found that boys who were rated among the top 25 percent of the group in aggressiveness fared much worse if they started out in chaotic 1st grade classrooms. By the time they reached 6th grade, those students were 59 times more likely than the average child to exhibit severe aggressive behavior. In comparison, students from the same quartile who started school in calmer, better managed classrooms, were only 2.7 times

> more likely than most children to act up in the 6th grade…The researchers have since tracked the same students through ages 19 or 21…and the effects appear to be holding (Viadero, 2002, pp. 2-3).

Dr. Killam discussed one effective behavior strategy and agreed that others just as effective were to be found in research projects but stated, "half the teachers in his study did not have any effective tools for managing classrooms" (Viadero, 2002, p. 3). A superintendent serving in the think-tank concluded, "I don't think there's a very good marriage between practice and research" (Viadero, 2002, p. 3).

A May, 2003 report to Congress by the United States General Accounting Office (GAO) entitled, 'Special Education: Clearer Guidance Would Enhance Implementation of Federal Disciplinary Provisions' determined that "In the 2000-01 school year, more that 91,000 special education students were removed from their educational settings for disciplinary reasons" (USGAO, 2003, p. 1). The GAO was asked to find out where those students went, how many of them received educational services during their removal and how much United States Department of Education support and monitoring of district disciplinary actions occurred. The number of removed students approximated 1.4 percent of all publicly educated special education students in the United States.

GAO "conducted an in-depth study of the use of disciplinary placements for special education students in the middle and high school grades in three states – Illinois, Maryland and North Carolina" (USGAO, 2003, p. 2). The states were selected because of the variance in their special education populations. GAO "collected data for the school year 2001-02…and surveyed a total of 36 district special education administrators and 78 school principals" with "response rates of 83 percent (30 school districts)

for…district special education administrators' survey and 63 percent (49 schools) for…survey of school officials" (USGAO, 2003, p. 2).

It was found that students removed from school for disciplinary purposes were either sent home on out-of-school suspensions or assigned to in-school suspension rooms. These removals were for fewer than 10 days. Longer removals were to alternative schools or homebound education programs (USGAO, 2003, p. 3). "School district officials reported that they generally did not provide any services to assist returning special education students in acclimating to their regular educational setting after a disciplinary placement" (USGAO, 2003, pp. 2-3).

While the Department of Education did provide information to school district personnel about federal mandates, school officials reported that "this guidance was not specific" (USGAO, 2003, p. 4). "Some state and local education officials also said that the information contained in the regulations was difficult to access" (USGAO, 2003, p. 4). Researchers referenced their findings in 2001 that IDEA was not an impediment to the disciplining of special education students and that they appeared to be assigned the same consequences as students without disabilities but recognized that study as focusing "on serious student misconduct (drugs, weapons, assault, rape, sexual assault and robbery) and did not focus on less serious offenses" (USGAO, 2003, p. 6).

Researchers determined that "Because state and local district officials may not have the specific information that they need to comply with federal requirements, disciplined special education students may not receive timely protections and services" (USGAO, 2003 pp. 17-18). It was noted that U.S. Department of Education officials agreed that more specific information was not required.

Summary

A free public education for all children is an American ideal that few of our citizens would argue against. Certainly it is logical that an educated populace is more desirable that an uneducated citizenry. Over time the scope of an American education has expanded and schools are now expected to accommodate and teach all children.

Economic realities have let to the establishment of larger and larger schools and pre-kindergarten programs are common. With increased student populations come more opportunity for student-to-student conflict, student/adult conflict and individual student misconduct. This would be true if the student population was homogenous. When a very diverse student population is allowed to become huge there is no avoiding the fact that student behavior management will become an issue.

The 1997 IDEA reauthorization created even more extensive procedural safeguards for students with disabilities and put school administrators in the position of implementing a dual discipline system. Litigation linked to disciplinary steps taken with students with disabilities in the public school is common. Areas of dispute include Free and Appropriate Public Education, Alternative Educational Settings, manifestation determinations, stay put, personnel issues and minority overrepresentation.

As Bowen (2003), school board attorney for Pinellas County Schools, Florida has stated to principals in August, 2003:

> "Your legislators have demonstrated their belief that there is no behavior or pattern of behaviors demonstrated by a student that you, in your public school setting, cannot accommodate or change through the use of a proper Functional Behavior

Assessment (FBA) and Behavior Improvement Plan (BIP). If the student continues the behavior it is because the school did not prepare a proper FBA and BIP. Revise it. If the behavior continues, it is because the school has still not developed a proper FBA and BIP. The student and parents have no responsibility for the student's behavior."

Chapter Three

Methodology

Statement of the Problem

The focus of this study is to determine how the 1997 IDEA reauthorization mandates regarding student discipline have been interpreted and implemented in three similar, urban districts and how that implementation is perceived by selected staff members. The selected school districts were Pinellas County Schools, Florida, Charlotte-Mecklenberg Schools, North Carolina and Indianapolis Public Schools, Indiana.

Purpose of the Study and Research Questions

The purpose of this collective case study was to examine perceptions of the implementation in three large, urban, K-12, public school districts of 1997 IDEA mandates related to student discipline as they existed until May 2003 by reviewing policies and procedures in those districts and collecting information from selected staff members. The research questions addressed were:

1. In the three school districts how were the mandates interpreted and what school board policies were developed to implement them? How were these policies similar or dissimilar? To address this inquiry I reviewed, compared and contrasted the relevant school board policies from the three school districts to ascertain whether the federal laws were interpreted in the same manner and whether common ways of work were created in the three states. Dr. Allen Mortimer, Director of Planning and Policy in the

Research and Accountability department of the Pinellas County School District, also reviewed the policies to validate my findings.

2. In the three selected school districts, what guidelines other than school board policies were put into place to ensure compliance with the laws and policies related to the exclusion from school of students with disabilities for disciplinary reasons? In this instance I collected, reviewed and compared documents prepared by the three district staff members that dealt with directions to those addressing school discipline of students with disabilities on a daily basis. These included Codes of Student Conduct or Exceptional Education Department Guidelines for Student Discipline and other district documents that may or may not have been adopted as policy by their school board.
3. In the three school districts what did the school attorney employed by the school district, a district administrator in the exceptional education department and three principals in schools of different levels and with a median number of students with disabilities in their schools report to be their perception of the primary issues they encountered in the area of disciplining students with disabilities since the 1997 reauthorization of IDEA and through May 2003? This information was obtained through interviews with the identified individuals or in some cases submitted written responses to the interview questions. Interviews in Pinellas County, FL were face to face and interviews in North Carolina and Indiana were conducted by telephone and in two interviews the protocol

responses were submitted in writing and no conversation occurred. I asked what issues they dealt with most frequently in this area of their job and whether dealing with this law and the related policies had significantly changed their way of work and if so, how? Prior to the interviews, questions were developed. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability department of the Pinellas County School District reviewed these questions. Dr. Mortimer must approve any survey conducted in the Pinellas County School District and works with individuals within and outside the district as they develop surveys and questionnaires to use in schools. After Dr. Mortimer's review the questions were piloted on staff members of the Pinellas County School District (one district administrator, one attorney and one principal) and finalized. After review, pilot and adjustment questions (See Appendix A), were mailed to the interviewees and appointments were scheduled for the interviews. Interviews were conducted and responses were added to the data utilized in the study.

Research Methods

With regard to research methods, Tashakkori and Teddlie describe "two prototypical monomethod designs: (a) the laboratory experiment, characterized by a controlled research environment in which a manipulation of variables occurs and involving confirmatory investigations of a prior hypothesis, and (b) the descriptive case study, characterized by a natural environment in which no manipulation of any variable

occurs and involving exploratory investigations" (Tasakkori and Teddlie, 1998, p. 30). The major difference noted between experiments and case studies is that the former occurs in a controlled setting and the latter in a natural setting. Tashakkori and Teddlie however, view this distinction as more of a continuum when it comes to error variance and the control of variables.

"The Qualitative Researcher as Bricoleur and Quilt Maker"

(Levi-Strauss, 1966, p. 4)

A bricoleur is a "Jack of all trades or a kind of professional do it yourself person" (Denzin and Lincoln, 2000, p. 16). Denzin and Lincoln use this definition in their description of the qualitative researcher as one who uses diverse tools and methods to piece together an in depth interpretation of a phenomenon (Denzin and Lincoln, 2000, p. 16). Flick states that "qualitative research is inherently multi method in focus…The use of multiple methods, or triangulation, reflects an attempt to secure an in-depth understanding of the phenomenon in question. Objective reality can never be captured. We know a thing only through its representations" (Flick, 1998, pp. 229-230).

The general focus of the many qualitative research methods moves in several directions simultaneously: "(a) the 'detour through interpretive theory' linked (b) to the analysis of the politics of representation and the textual analysis of literary and cultural forms, including their production, distribution, and consumption; (c) the ethnographic qualitative study of these forms in everyday life; and (d) the investigation of new pedagogical and interpretive practices that interactively engage critical cultural analysis in the classroom and the local community" (Denzin and Lincoln, 2000, p. XV).

The Case Study

Stake states “case study is not a methodological choice but a choice of what is to be studied.” By whatever methods we choose to study the case “we could study it analytically, or holistically, entirely by repeated measures or hermeneutically, organically or culturally, and by mixed methods but we concentrate, at least for the time being, on the case” (Denzi and Lincoln, 2000, p. 435).

Yin states that case studies can be exploratory, descriptive or explanatory. He defines the case study in two ways. First as “an empirical inquiry that

- investigates a contemporary phenomenon within its real-life context, especially when
- the boundaries between phenomenon and context are not clearly evident” (Yin, 1979, p. 13).

and second as an inquiry that

- “copes with the technically distinctive situation in which there will be many more variables of interest than data points, and as one result
- relies on multiple sources of evidence, with data needing to converge in a triangulation fashion, and as another result
- benefits from the prior development of theoretical propositions to guide data collection and analysis” (Jick, 1979, p. 13).

Stake identifies three categories of case study:

- “Intrinsic case study if it is undertaken because, first and last, the researcher wants better understanding of this particular case. Here, it is not undertaken because the case represents other cases or because it

illustrates a particular trait or problem but because, in all its particularity and ordinariness, this case itself is of interest…writings illustrating intrinsic case study includes The Education of Henry Adams: An Autobiography (Adams, 1918)" (Stake, 2000, p. 437).

- "instrumental case study if a particular case is examined mainly to provide insight into an issue or to redraw a generalization. The case is of secondary interest, it plays a supportive role, and it facilitates our understanding of something else. The case still is looked at in depth, its contexts scrutinized, its ordinary activities detailed, but all because this helps the researcher to pursue the external interest. The case may be seen as typical of other cases or not…Here the choice of case is made to advance understanding of that other interest…Writings illustrating instrumental case study include…Campus Response to a Student Gunman (Asmussen and Creswell, 1995/1997)" (Stake, 2000, p. 437).
- "collective case study if it is an instrumental study extended to several cases. In this instance a researcher examines a number of cases in order to investigate a "phenomenon, population or general condition…Individual cases in the collection may or may not be known in advance to manifest some common characteristic. They may be similar or dissimilar, redundancy and variety are each important. They are chosen because it is believed that understanding them will lead to a better understanding, perhaps better theorizing, about a still larger collection of cases. Works illustrating collective case study include…The Dark Side of

Organizations: Mistake, Misconduct and Disaster (Vaughan, 1999)" (Stake, 2000, pp. 437-438).

"Harrison White categorized social science casework according to three purposes: case studies for identity, explanation or control" (White, 1992, p. 90).

Case Study: Strengths and Limitations

Yin writes, "the case study's unique strength is its ability to deal with a full variety of evidence – documents, artifacts, interviews, and observations – beyond what might be available in…" other types of research (Yin, 1994, p. 9). Case studies are, according to Yin, the research design of choice when "…a 'how' or 'why' question is being asked about a contemporary set of events over which the investigator has little or no control" (Yin, 1994, p.9).

Ary, Jacobs and Razavieh report that the "advantages of the case study are also its weaknesses. Although it can hone depth, it will inevitably lack breadth. The dynamics of one…social unit may bear little relationship to the dynamics of others" (Ary, Jacobs and Razavieh, 1972, p. 287). Additionally, case studies can "take too long" and "may grow into lengthy detailed studies from which it is difficult to glean the outcome" (Yin, 1994, p.9). Other cautions found in the literature include the presence of researcher bias in conducting interviews and interpreting responses. Van Dalen warns that "elements of subjectivity may enter a report, particularly when judgments are made about a subject's character and motives. An investigator must guard against permitting personal biases and standards to influence his interpretations" (Van Dalen, 1973, p. 210).

Triangulation

"To reduce the likelihood of misinterpretation, researchers employ various procedures, two of the most common being redundancy of data gathering and procedural challenges to explanations" (Denzin, 1993, p. 320). Qualitative researchers refer to this process as "triangulation which utilizes multiple perceptions to clarify meaning" (Levi-Strauss, 1966, p. 443). Flick adds to this observation by stating that although no interpretation or observation can be exactly repeatable, "triangulation also serves to clarify meaning by identifying different ways the phenomenon is being seen" (Flick, 1998, p. 225).

In triangulation a researcher uses various methods and sources to validate findings. "The concept of 'triangulation of methods' was the intellectual wedge that eventually broke the methodological hegemony of the monomethod purists" (Jick, 1979, p. 604). In 1979, Jick (writing in the area of administration) discusses triangulation in terms of "the weaknesses of one method being offset by the strengths of another" (Jick, 1979, p. 604). He further described "within methods of triangulation" which refers to the use of multiple qualitative or quantitative methods within the same study and "across methods triangulation" which refers to the utilization of both quantitative and qualitative methodology within the same study (Jick, 1979, p. 604).

Patton (1987) described four triangulation possibilities including data sources, using different investigators, presenting different theories and using various methodologies.

This Study

The approach this study took was through a collective case study as suggested by Yin in Case Study Research, Second Edition, 1994. This collective case study examined the impact of 1997 IDEA reauthorization regulations (a contemporary phenomenon) as they existed through May 2003 within the context of three practicing large K-12 public school districts. Triangulation of data sources occurred through the consideration of school board policies, current related district documents and interviews of practicing educators and attorneys in three school districts.

Participants

The three school districts selected for inclusion in this study are similar in that each serves an urban community and educates from 40,000 to 112,000 students. All of the districts have, within the past decade, operated under the supervision of a federal court desegregation order and are functioning now within relatively new school choice pupil assignment plans. In 1954 the Brown v Board of Education Supreme Court decision terminated officially sanctioned segregation. "From the mid 1960's to the late 1970's a vast transformation took place in American public schools as federal courts and governmental agencies demanded race-conscious policies in every facet of school operations. The most controversial aspect of school desegregation during this period involved the rules for assigning students to schools" (Armor and Rosell, 2001, pp. 219-220). "In the 1971 Swann decision for Charlotte-Mecklenburg, North Carolina, the Supreme Court endorsed strict racial balance quotas for all schools in a system and approved cross-district mandatory busing to attain complete racial balance" (Armor and

Rosell, 2001, p. 224). Many large school districts subsequently came under similar federal court orders. Green et al v. County School Board of New Kent County et al. was a Virginia case decided by the Supreme Court in May 1968 and set forth what became known as the Green factors ("Green et al. v. County", 1968). The Green factors were "six desegregation plan components – student assignment, faculty, staff, facilities, transportation, and extra curricular activities…All school systems under court order had to show they had complied with each of them before they could be declared unitary (non discriminating) systems and released from court orders" (Armor and Rosell, 2001, p. 220). Balancing those similarities it is significant that each of the chosen school districts is located in a different state so it can be discerned whether perceived IDEA implementation differs in diverse geographic areas.

Pinellas County, Florida is a large (112,000 students), urban school district that is just beginning to operate without the restrictions of a federal desegregation court order. The Pinellas County school district was placed under a federal desegregation order in 1971. To comply with the mandates of that order a complex pupil assignment zoning system with regular rotations from zone to zone in some areas was established. In 1998 the school board, after listening to parents who wanted stability in their children's school assignment, directed Superintendent J. Howard Hinesley to seek unitary status. After lengthy negotiations with the NAACP Legal Defense Fund (a party in the original law suit), agreement was reached to request the lifting of the court order and in August 2000, unitary status was granted. A controlled CHOICE student assignment plan was instituted in August 2003 with the plan for an expanded CHOICE plan to begin in 2007 (Janssen, 2001, pp. 119-120).

Charlotte-Mecklenburg Schools, North Carolina also operated under a desegregation court order. It was in the 1971 Swann v. Charlotte-Mecklenburg Board of Education Supreme Court decision that "a desegregated school was defined as one whose racial composition is roughly the same as the racial composition of the entire school system" (Armor and Rosell, 2001, p. 232). The Charlotte-Mecklenburg School District operated under the 1971 federal court order until 1975 when the judge lifted it, believing that adequate progress in the move toward racial balance was being made ("The History of", p. 2). "While the system was focused on student achievement, the issue of student assignment resurfaced" when a parent "sued CMS, claiming that his daughter was denied enrollment to…a magnet school because she was not black" ("The History of", p. 3). The Swann case was reactivated in 1998 and, finally, in September 1999, CMS was declared unitary but the court "mandated that a new student assignment plan be in place for the 2000-2001 school year" ("The History of.", p. 3). CMS returned to court asking for an additional year to put in place the new student assignment plan. That request was granted, however, in 2000 "The 4th Circuit Court of Appeals ruled that CMS is not unitary in some areas such as facilities, student assignment and transportation and sent them back to the lower court for reconsideration. Areas such as faculty, staff and extra curricular activities and student discipline were considered unitary" ("The History of.", p. 4). It was not until September 2001 that "Fourth Circuit Court of Appeals affirmed an earlier court ruling that CMS has achieved unitary status and ordered the Board of Education to operate the school system without regard to the desegregation order no later than the 2002-2003 school year" ("The History of", 2003, p. 5). The Charlotte-

Mecklenburg school district is among the top 25 largest school systems in the nation, with over 105,000 students.

The Indianapolis Public Schools in Indianapolis, Indiana similarly has operated under a desegregation court order. The Indianapolis Public School System, according to current Superintendent Pat Pritchett "was found…operating a segregated school system" (Schneider, 1999, p. 1) in 1971 and was placed under a federal court order. That order remained in place until 1998 (U.S. Department of Justice, 1998). The Indianapolis Public School System educates over 42,000 students and employs more than 5,000 people.

Summary

The research method for this study is a collective case study with a triangulation of data sources. Participants were described as three large, K-12, urban, public school districts and the rationale for their selection was outlined. Each of the chosen districts educates over 40,000 students in an urban setting and has operated under a federal court order dealing with desegregation during the past decade.

Chapter Four

Results

State and District Demographics

Similarities between the three selected school districts are their large, urban populations and their history of becoming unitary after functioning within the parameters of a federal desegregation court order. The 2001-02 state and district school demographics are outlined in Appendix C.

The first two research questions addressed in this collective case study were, in the three school districts, how were the mandates interpreted and what school board policies were developed to implement them? How were these policies similar or dissimilar? To address this inquiry I reviewed, compared and contrasted the relevant school board policies from the three school districts to ascertain whether the federal laws were interpreted in the same manner and whether common ways of work were created in the three states. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the Pinellas County School District, also reviewed the policies to validate my findings. In the three selected school districts, what guidelines other than school board policies were put into place to ensure compliance with the laws and policies related to the exclusion from school of students with disabilities for disciplinary reasons? In this instance I collected, reviewed and compared documents prepared by staff members in the three districts that dealt with directions to those addressing school discipline of students with disabilities on a daily basis. These included Codes of Student Conduct or Exceptional Education Department Guidelines for Student

Discipline and other district documents that may or may not have been adopted as policy by their school board.

It was discovered that in Pinellas County compliance information is outlined in the Code of Student Conduct and the Exceptional Student Education Handbook, both of which are adopted as school board policy. In Charlotte-Mecklenburg these issues are addressed in their Secondary Student Rights, Responsibilities and Character Development Handbook, which is adopted as school board policy, and the District Services Manual, which is not. In Indianapolis detailed compliance information is addressed within the general school board policies. Additionally, a compilation of student related board policies and procedures is adopted as policy, printed and given to each student annually. The latter refers the reader to the larger board policy book where necessary. Because of the discovered overlapping of school board policy and procedural documents, the responses to the first two research questions have been consolidated.

The 1997 IDEA student discipline mandates that have been incorporated into School Board Policy and other related documents in the three school districts are discussed below.

Out of School Suspension

The IDEA, 1997 language related to the use of out of school suspension with students who are disabled reads, in part:

> "Authority of school personnel…(i) to an appropriate interim alternative educational setting, or suspension, for not more that 10 school days (to the

> extent such alternatives would be applied to children without disabilities)" (IDEA, 1997, p. 61).

The Codes of Student Conduct are adopted as school board policy in each of the three districts although they have different titles. The Pinellas County School Board Code of Student Conduct is titled as such and serves the same purpose as the Charlotte-Mecklenburg Schools Secondary (or Elementary) Student Rights, Responsibilities and Character Development Handbook and the Indianapolis Public Schools Policies and Procedures. All are updated, approved as school board policy, printed and given to each student annually. In all of the districts language is included in their Codes of Student Conduct answering the question, "Can a student with disabilities receive an out-of-school suspension?" (PCSB "Code of Student Conduct", 2003, p. 19) as follows:

PINELLAS COUNTY -

> A student with disabilities may be suspended from school just like any other student. During 10 days of an out-of-school suspension in any one school year a student with a disability will not receive any educational services during the suspension. If there are more than 10 days of out-of-school suspension during the school year, the student with a disability will receive the educational accommodations provided for in the student's IEP (PCSB "Code of Student Conduct", 2003, p. 19).

Additionally, the Pinellas County School Board adopted PCSB Exceptional Student Education Handbook as policy in November, 2000. This handbook is updated annually and states the following about suspending students with disabilities:

> Out of school suspension is reserved for the most serious offenses. Whenever possible, the student should continue to receive instruction…In the event of serious offenses, students with disabilities may be suspended from school for no more that 10 cumulative days in a school year. Educational services do not need to be provided during these days. Note: If a student is sent home early or asked to remain home, these days or partial days count toward the cumulative total even if formal suspension notices are not provided. If a student is suspended from the bus and is unable to attend school, these days count toward the cumulative total as well (PCSB "Exceptional Student Handbook", 2000, p. 93).

CHARLOTTE MECKLENBURG – In the CMS Secondary Student Rights, Responsibilities and Character Development Handbook under "Suspension…of Disabled Students" (CMS "Student Rights", 2003, p. 47) the following is found:

> Students may be suspended for not more than 10 consecutive days for any violation of school rules and additional removals of not more that 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change in placement (CMS "Student Rights", 2003, p. 47).

There is no mention of students with disabilities in the Elementary Handbook but the district has created and disseminated a Services Manual, developed by staff of the CMS Alternative Education and Safe Schools Department. The inclusion of IDEA information is planned for future revisions of the Elementary Handbook. The section in the Services

Manual that deals with IDEA information and out-of-school suspension includes the following statements:

> Contrary to public perception students with disabilities can be disciplined for not complying with local board policy or Codes of Student Conduct, or breaking the law. However, because of their disabilities, these students are guaranteed the right to a free appropriate public education, including procedural safeguards…
>
> It is important to remember that prevention and anticipation are the key factors in eliminating the need for suspension/expulsion…We must not overlook the need for sound, appropriate alternative educational settings for all students, with and without disabilities. . When a suspension is for 10 cumulative school days or less in a given school year, the school may follow its normal disciplinary procedures…While there are no specific actions that must occur during this suspension period, if school personnel anticipate…further disciplinary action…this period of removal can be used for further planning…(CMS "Services Manual", 2003, p. 52).
>
> When a student with a disability is subject to a disciplinary removal for more than ten cumulative school days in a given year, the LEA must provide services during days of removal…to enable the child to progress in the general curriculum and appropriately advance toward achieving the goals set out in the child's IEP (CMS "Services Manual", 2003, p. 53).

INDIANAPOLIS – Regarding the suspension of students with disabilities the IPS Student Code of Conduct states, "IPS will follow all applicable laws and regulations governing the procedures for the suspension…of students with disabilities" (IPS "Board Policies", 2003, p. 41). Within the IPS general school board policies, but not outlined in the IPS Policies and Procedures booklet, is the following additional, clarifying language:

> This public agency may…suspend your child for not more than ten (10) cumulative instructional days in a school year for violations of the school discipline policy, in accordance with policies and procedures that apply to all students, including students without disabilities (IPS "Board Policies", 2003, pp. 20-21).

Summary: With regard to the suspending of students with disabilities out-of-school, the policies and documents of all three districts are clear in their direction to staff about the need to provide the student with services outlined in the student's IEP if the removal from school exceeds 10 cumulative days during a given school year. Two of the districts seem to caution students with disabilities about the accountability with statements, "A student with disabilities may be suspended from school just like any other student" (PCSB "Code of Student Conduct", 2003, p.19) and "Contrary to public perception students with disabilities can be disciplined for not complying with local board policy or Codes of Student Conduct" (CMS "Services Manual", 2003, p. 52).

Placement in Alternative Education Settings

The IDEA, 1997 language dealing with the placement of students with disabilities in alternative education settings includes the following authority for the LEA to remove a child with a disability:

> (ii) to an appropriate interim educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more that 45 days if…(I) the child carries a weapon to school or to a school function…or…(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function (IDEA, 1997, p. 61).

PINELLAS COUNTY – In the 2003-04 PCSB Code of Student Conduct the assignment of students with disabilities to an alternative educational setting is addressed as follows:

> A student with a disability may be reassigned to an alternative school because of the student's misconduct. To do so, the team consisting of the parents and school personnel familiar with the student must meet and develop the Functional Behavior Assessment and the plan on how to deal with the student's misconduct. The team must also determine if the student's disability is causing the misconduct. Such a reassignment to an alternative program may or may not be a change in placement. If it is a change in placement, then all of the procedural safeguards for students with disabilities will be followed as required under the Individuals with Disabilities Education Act (IDEA), the federal law providing for the education of students with disabilities (PCSB "Code of Conduct", 2003, p. 19).

The PCSB Code of Student Conduct further states that "Because students with disabilities are entitled to receive the educational services provided for in their IEP during any expulsion, they should receive a disciplinary reassignment to an alternative school instead of an expulsion" (PCSB "Code of Student Conduct", 2003, p. 19).

The PCSB Exceptional Student Education Handbook states,

> If a student commits a serious offense, i.e. drugs, weapons, battery resulting in injury, or threats to school personnel, educational services will be provided at an alternative middle or high school facility until a manifestation determination meeting is conducted within 10 business days…
>
> …The alternative facility must enable the student to continue to progress in the general curriculum; receive the services and modifications specified in the IEP that will enable him/her to meet IEP goals; and receive services that will address the behavior which resulted in the removal and are designed to prevent the misconduct from recurring (PCSB "Exceptional Student Handbook", 2000, p. 94).

CHARLOTTE-MECKLENBURG – The CMS Secondary Student Rights, Responsibilities and Character Development Handbook states the following with regard to the placement of a student with disabilities into an alternative educational setting:

> The principal may consider moving a student with a disability to a temporary placement for up to 45 days for any one of the following violations:
>
> - Possession of weapons* at school or a school function;

- Possession or use of illegal drugs at school or a school function;
- Sale/solicit the sale of a controlled substance at school or at a school function.

* A weapon is defined for these purposes as "a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of fewer than 2 ½ inches in length. Note: Under no circumstances may discipline procedures be imposed on disabled students, which exceed those which would be applied to non-disabled students for the same offense (CMS "Student Rights", 2003, p. 50).

The Charlotte-Mecklenburg Schools Services Manual adds additional guidance by stating:

> when a child with a disability carries a weapon or knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance, the student may be placed in an interim alternative educational setting for forty-five (45) school days…The alternative educational setting must be determined by an IEP team which includes the parent. The setting must be selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications that will enable the child to meet the goals set out in the

> IEP. The setting must also include services and modifications that are designed to prevent the behavior that subjects the child to disciplinary removal from recurring (CMS "Services Manual", 2003, p. 54).

INDIANAPOLIS – The IPS Policies and Procedures refers the reader to the Indianapolis Public School Board Policies for provisions related to school discipline of students with disabilities. Within that section is found,

> Placement in Interim Alternative Educational Settings. This public agency may order the placement of your child to an appropriate interim Alternative Educational setting…for violations of school discipline policy in accordance with policies and procedures that apply to all students including students without disabilities.
>
> Your child may be removed to an appropriate interim Alternative Educational setting for not more than forty-five (45) calendar days if:
>
> 1. Your child carries a weapon to school or to a school function; or
> 2. Your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function (IPS "Board Policies", 2003, pp. 20-21).

Summary: In each of the three districts' policy and procedural documents placement in alternative education settings is addressed in conjunction with the possession of a weapon and involvement with illegal drugs. The PCBS Exceptional Student Handbook adds "battery resulting in injury or threats to school personnel" (PCSB "Exceptional Student Handbook", 2000, p. 94). CMS and IPS policies and documents specify the 45 day limit and IPS policy states that a student with disabilities may be placed in an alternative

education setting "for violations of school discipline policy in accordance with policies and procedures that apply to all students, including students without disabilities" (IPS, "Board Policies", 2003, pp. 20-21).

While the policies and documents clearly implement the law, there is also evidence of an attempt to provide school based administrators with room to maintain an orderly, safe environment in their schools.

Manifestation Reviews

The IDEA, 1997 language addressing manifestation reviews includes the following statements:

> (A) If a disciplinary action is contemplated…for a behavior of a child with a disability…or if a disciplinary action involving a change of placement for more than 10 days is contemplated…
>
> > (i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and
> >
> > …(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision…is made, a review shall be conducted by the IEP Team and other qualified personnel…
> >
> > (c)…the IEP Team may determine that the behavior…was not a manifestation of the child's disability only if the IEP Team…in terms of

the behavior subject to disciplinary action considers all relevant information, including…

(I) evaluation and diagnostic results…

(II) the child's IEP and placement; and

(ii) then determines that

…(I) in relationship to the behavior…the child's IEP and placement were appropriate and the special services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior…

(III) the child's disability did not impair the ability…to control the behavior (IDEA, 1997, pp. 62-63).

If there is a

(5) Determination that behavior was not a manifestation of the disability

(A)…the relevant disciplinary procedures applicable to children without disabilities may be applied…in the same manner in which they would be applied to children without disabilities except…" (IDEA, 1997, pp. 64-65) "…if the placement does not provide

> the…free appropriate public education…available to all children with disabilities…between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school (IDEA, 1997, p. 26).

PINELLAS COUNTY - Manifestation reviews are addressed in the PCSB Exceptional Student Education Handbook but not in the PCSB Code of Student Conduct. In the Handbook the following information is found:

> If a student commits a serious offense, i.e. drugs, weapons, battery resulting in injury, or threats to school personnel, educational services will be provided at an alternative middle or high school facility until a manifestation determination meeting is conducted within 10 business days.
>
> If the IEP team determines that the student's behavior is not related to the disability, the student will be assigned to the alternative facility in the same manner that students without disabilities are assigned…
>
> . . If the IEP determines that the student's behavior is related to the disability, the student may be assigned to the alternative facility if the IEP team determines that is the most appropriate placement, or another recommendation may be made (PCS "Exceptional Student Education Handbook", 2000, pp. 94-95).

CHARLOTTE-MECKLENBURG - In the CMS Secondary Student Rights, Responsibilities and Character Development Handbook the following process is outlined:

The IEP team of the student's home school must conduct a manifestation determination (including parent/guardian).

The IEP team must convene within 10 school days after the date on which the decision to take this action is made to determine if the behavior in question is related to the student's disability. In making this determination the IEP team should consider the following information:

a. Is the IEP appropriate?

b. Is the current placement appropriate?

c. Did the student's disability impair his/her ability to understand the impact and consequences of the behavior?

d. Did the student's disability impair his/her ability to control the behavior?

If the responses to questions (a) and (b) are yes and the responses to (c) and (d) are no, no manifestation exists and the student may remain in the Interim Alternative Educational Placement for the full 45 days.

If, however, the answer to any of the four questions is not as set forth above, the behavior is automatically deemed to be a manifestation of the disability. The IEP team must then consider whether (a) it is appropriate to keep the student in the Interim Alternative Educational Placement for the full 45 days and (b) whether the student's IEP

> (including his current placement before the disciplinary action) remains appropriate (CMS "Secondary Student Rights", 2003, p. 50).

The Charlotte-Mecklenburg Schools Services Manual reminds staff that if a student with a disability is being considered for

> a disciplinary removal for more than 10 consecutive school days or for a series of removals that constitute a change in placement…An IEP team and other qualified personnel must convene within ten (10) school days to determine if the behavior is a manifestation of the child's disability…If,…the team determines that the behavior is not a manifestation of the child's disability, school personnel may follow its normal disciplinary procedures subject to the parents' right to seek a due process hearing although the student must be provided a free and appropriate education during this period of disciplinary removal…If the team determines that the behavior is a manifestation of the child's disability, the child may not be removed (CMS "Service Manual", 2003, p. 53).

Also, as previously noted,

> When a child with a disability carries a weapon or knowingly possesses or uses illegal drugs or solicits the sale of a controlled substance, the student may be placed in an interim alternative educational setting for forty-five (45) schools days (PCSB "Exception Student Education Handbook", 2003, p. 53).

INDIANAPOLIS - In the IPS Policies and Procedures booklet, manifestation reviews are addressed as follows using somewhat different terminology but reflects the same interpretation as is found in Pinellas County and Charlotte-Mecklenburg:

> Causal Relationship Procedures - If a disciplinary action involving a change of placement to an interim alternative educational setting if a disciplinary action involving a change of placement for more than ten (10) instructional days in a school year is recommended for your child because he/she has engaged in behavior that violated any rule or code of conduct, this public agency must:
>
> 1. notify you of that decision no later than the date on which the decision to take action is made;
> 2. provide you with a copy of these procedural safeguards;
> 3. invite you to participate in a causal determination CCC (Case Conference Committee) meeting; and
> 4. conduct the causal determination CCC meeting immediately, but not later than ten (10) school days after the date in which the decision to take the action is made.
>
> At this meeting, the CCC and other qualified personnel must first review and consider the following:
>
> 1. your child's current IEP and placement

2. all relevant information, including evaluation and diagnostic results, relevant information supplied by you;
3. observations of your child; and
4. the relationship between your child's disability and the behavior.

In order to find that the behavior was not causally related to the disability, the CCC must determine:

1. that special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with your child's IEP and placement;
2. that your child's IEP and placement were appropriate;
3. that there is no relationship between your child's disability and his/her behavior subject to disciplinary action;
4. your child's disability did not impair his or her ability to understand the impact and consequences of the behavior; and
5. your child's disability did not impair his or her ability to control the behavior.

If it is determined that your child's behavior was not causally related to your child's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to your child in the same manner in which they would be applied to students without disabilities except that a FAPE must be made available to your child…

> If the CCC determines that the behavior was causally related to your child's disability, disciplinary procedures applicable to students without disabilities may not be applied (IPS "Board Policies", 2003, p. 21).

Summary: The manifestation review process is in place in the policies of all three districts, although IPS policy calls it a causal determination. The procedures mirror those mandated in law.

Stay Put Rule

The IDEA, 1997 language outlining the "stay put" provision reads, in part, as follows:

> Maintenance of Current Educational Placement. Except as provided in subsection (K) (7), during the pendency of any proceedings conducted to this section unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child (IDEA, 1997, p. 61).

PINELLAS COUNTY - The "stay put" provision as it relates to student discipline is addressed in the Exceptional Student Education Handbook rather than the Code of Student Conduct. That document states:

> …If the parent disagrees with the manifestation determination, he/she may request an expedited hearing. The student remains in the current school unless the parent and school personnel agree otherwise; drugs or weapons

> are involved; or the school district requests a hearing officer to order that the student be excluded as a result of the danger presented by the student. If drugs or weapons are involved or the hearing officer rules that the student may be excluded, the time period for the alternative facility is 45 school days (PCS "Exceptional Student Education Handbook", 2000, p. 95).

CHARLOTTE-MECKLENBURG - In the Secondary Student Rights, Responsibilities and Character Development Handbook two statements refer to the "stay put" mandate.

> …Stay Put Rule: Students who are being tested for possible placement in an Exceptional Children's Program must remain in the current placement until the testing is complete. In some instances students in violation of the Code of Conduct may qualify for a 45 day Placement (drug and/or weapon violation) (CMS "Student Rights", 2003, p. 42).

and, after an assignment to an alternative placement,

> If the parent/guardian contests the placement, stay put is the alternative placement for the duration of 45 days. At the expiration of the 45-day period, the student must return to his/her previous placement unless school officials and the parent/guardian agree otherwise (CMS "Student Rights", 2003, p. 51).

Additionally, the Charlotte-Mecklenburg Schools Services Manual states:

> Stay-put is implemented when parents file a due process petition because they are in disagreement with the school system over a proposed change in

> the identification evaluation, or placement of the student, or the provision of a free and appropriate education…(CMS "Service Manual", 2003, p. 55).

INDIANAPOLIS – In the 2003-04 IPS Policies and Procedures booklet the "stay put" provision of IDEA is addressed in the section dealing with "Due Process Hearing and Impartial Review Rights ("IPS Code of Student Conduct", 2003, p. 24) as follows:

> Unless you and the public agency agree otherwise, your child will remain in his/her present educational placement…during a due process hearing, administrative hearing appeal or judicial proceeding (IPS "Code of Student Conduct", 2003, p. 24)

Summary: Each of the three districts' policies clearly state that during any proceeding designed to settle disagreements about the placement of a student with disabilities, the student will remain in the current placement.

Previously Unidentified Students

The IDEA, 1997 language dealing with students who have not yet been identified as being disabled includes:

> (8) Protection for children not yet eligible for special education and related services.
>
> (A) In general – A child who has not yet been determined to be eligible for special education…and who has engaged in behavior that violated any rule

> or code of conduct of the LEA…may assert any of the protections provided…if the LEA had knowledge…that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred (IDEA, 1997, p. 65).

PINELLAS COUNTY - This issue is not addressed in the PCSB Code of Student Conduct but the Exceptional Student Education Handbook states the following:

> The previously unidentified student may receive all of the above protections if the district had knowledge that the child had a disability before the behavior that caused the disciplinary action occurred…If a parent requests an evaluation of a regular education student who is suspended or expelled, evaluation will be expedited…If a student has been referred for evaluation to determine whether the student has a disability, the out of school suspension days are counted from the date the parent signed consent for the evaluation…(PCS "Exceptional Student Education Handbook", 2000, p. 95).

CHARLOTTE-MECKLENBURG - In the CMS Secondary Rights, Responsibilities and Character Development Handbook the following section is found:

> F. Children Suspected of Having a Disability: A child who has not yet been determined to be eligible for special education and related services and who has engaged in behavior that violates Charlotte-Mecklenburg Schools code of conduct may assert any of the protections described above if the child was a child with a disability before the behavior that led to the

disciplinary action. The following is considered to be evidence that there was knowledge that the child had a disability:

1. The parent has expressed concern in writing (or orally if the parent cannot write) to Charlotte-Mecklenburg Schools personnel that the child is in need of special education and related services.
2. The behavior or performance of the child demonstrates that need for such services;
3. The parent has requested an evaluation of the child to determine eligibility for special education and related services; or
4. The child's teacher or other personnel of the Charlotte-Mecklenburg Schools have expressed concern about the child's behavior or performance in accordance with special education referral procedures (CMS "Student Rights", 2003, p.54).

In the Charlotte-Mecklenburg Schools Services Manual this issue is addressed in the following manner:

> The student who has not been identified as a student with a disability may invoke the procedural safeguards that are available to an identified student with a disability if the school had knowledge that the child was a child with disabilities before the behavior that resulted in the disciplinary action occurred. A school shall be assumed to have knowledge that the student was suspected of having a disability if:

- The parent had expressed a concern in writing to the appropriate school official that the student is in need of special education and related services;
- The behavior or performance of the student demonstrates a need for services;
- The parent of the child has requested an evaluation; or
- The teacher of the student and other personnel of the school system have expressed concern about the behavior or performance of the child to the director of special education or other agency personnel…

The local education agency would not be deemed to have knowledge…if the school conducted an evaluation and determined that the child was not a child with a disability and did not require special education or upon request made a determination that an evaluation was not necessary and provided proper notice to the parents (CMS "Services Manual", 2003, p. 57).

INDIANAPOLIS - In the IPS Policies and Procedures there is a section titled, "For Students Not Yet Eligible for Special Education and Related Services" (IPS Policies and Procedures, 2003, p. 22). Within this section is found the following information:

> If this public agency has no knowledge that your child is a child with a disability, and your child engages in behavior that violates IPS rules or code of conduct, then your child may be subjected to the same disciplinary

measures applied to all other students without disabilities who engage in comparable behaviors.

This public agency is considered to have such knowledge if:

1. you have expressed your concerns in writing (unless you are illiterate or have a disability that prevents you from writing) to personnel of this public agency that your child needs special education and related services;
2. the behavior or performance of your child demonstrates the need for special education and related services;
3. you have requested IPS to conduct an evaluation to determine whether your child is a child with a disability who requires the provision of special education and related services; or
4. your child's teacher or other public agency personnel have expressed a concern about your child's behavior and performance to this public agency's Director of Special Education or other appropriate personnel.

If a request is made to evaluate your child during the time period for which your child is subject to disciplinary measures that result in disciplinary removal, the multidisciplinary team must meet to develop an assessment plan for the evaluation of your child. The evaluation must be completed in an expedited manner. Pending the results of the evaluation, your child will remain in the interim alternative educational setting determined by this public agency.

> If, after reviewing all assessments, information from the evaluation and information you provide, the CCC determines your child is a child with a disability, we will make special education and related services available to your child (IPS "Policies and Procedures", 2003, p. 22).

A review of the pertinent school board policies and related district documents from the three selected school districts reveals a consistent interpretation of the IDEA, 1997 language involving discipline. Since much of the policy language is taken directly from the law the policies from the three public school districts are almost interchangeable.

The final research question addressed in this study is:

1. In the three school districts what did the attorney employed by the school district, a district administrator in the exceptional education department and three principals in schools of different levels and with a median number of students with disabilities in their schools report to be their perception of the primary issues they encountered in the area of disciplining students with disabilities since the 1997 reauthorization of IDEA and through May 2003? This information was obtained through interviews with the identified individuals and in some cases submitted written responses to the interview questions. Interviews in Pinellas County, FL were face to face and interviews in North Carolina and Indiana were primarily conducted by telephone. I asked what issues they

dealt with most frequently in this area of their job and whether dealing with this law and the related policies had significantly changed their way of work and if so, how? Prior to the interviews, questions were developed. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the Pinellas County School District reviewed these questions. Dr. Mortimer must approve any survey conducted in the Pinellas County School District and works with individuals within and outside the district as they develop surveys and questionnaires to use in schools. After Dr. Mortimer's review the questions were piloted on staff members of the Pinellas County School District (one district administrator, one attorney and one principal) and finalized. After review, pilot and adjustment, questions (See Appendix A), were mailed to the interviewees and appointments were scheduled for the interviews. Interviews were conducted and responses were added to the data utilized in the study.

Two of the school districts in the study employ in-house attorneys (three in Pinellas County and two in Charlotte-Mecklenburg) and one district, (Indianapolis) contracts out all legal services. The districts with in-house legal departments also contract out a portion of their legal work. All of the attorneys have been involved in the training of school district staff and participate in training throughout the school year. The in-house attorneys provide training in IDEA/student discipline issues and procedures multiple times during a school year to various groups, such as school based and district administrators, teachers and social workers. The areas most frequently addressed include

the manifestation determination process and "stay put" issues. "Stay put" issues were seen as particularly problematic because a case dealing with a challenge to a change of placement can continue for years. Each of the attorneys interact regularly with school based and district level staff. Two of the attorneys mentioned dealing with more cases involving weapons and more aggression during recent years. One attorney reported "more serious offenses from younger students" and talked about "the need to focus on addressing the behaviors proactively and establishing programs to meet students' educational needs during a disciplinary period" (Interview responses from Attorneys, 2003) such as a 45-day move to an Alternative Education Setting. None of the attorneys said that the disciplinary provisions of the 1997 IDEA reauthorization increased their workloads but all agreed that at least half of their time is spent on cases dealing with issues related to students with disabilities. Some comments were:

> Given the tremendous size of the district the situations are quite varied. From a behavior perspective we have had an increase in weapon and aggression offenses. From a training perspective we have worked a lot on the manifestation process.

> The dual discipline system makes a mockery of discipline.

> I would like to see the law changed so that something less than full FAPE would be required when an ESE student is excluded…just as a limited continuation of educational services is provided during the expulsion of a non disabled student.

(Interview responses from Attorneys, 2003)

District level administrators in the three districts who work with the programs that educate students with disabilities interact with school based educators as they use the district processes and with attorneys when "glitches" occur or during legal challenges to district action. In two of the districts, manifestation reviews for students who may be moved to an Alternative Educational Setting are conducted by the school IEP team and in one district a county team facilitates that level of review, but includes school based staff members who have worked with the student. In one of the districts using the school team a compliance-coordination teacher must review all manifestation determination documents before being sent to the discipline office. Problems with the appropriate identification of manifestations was mentioned several times and that was part of the reason one district made it a district level process. In each of the districts compliance is described as a huge, time-consuming activity. Remarks included:

One of the district administrators from the Exceptional Education Department outlined the following three issues as those that have emerged most frequently during the past two years:

1. Concern from school based personnel and parents regarding the existence of a dual discipline system.
2. Need for expertise in behavior management for school personnel, and
3. Increase in paperwork requirements to document discipline issues in exceptional student education (Interviews with District ESE Administrators, 2003).

Other remarks from the district administrators include:

> (Since the 1997 IDEA reauthorization) Process compliance has become more critical. Concerns recording violations of IDEA, the inclusion of attorneys at IEP meetings and the amount of complex paperwork required has resulted in morale issues for teachers and administrators. There is a general concern that the paperwork requirements shift the emphasis from supporting highest student achievement.

> The main issues we have for all other discipline issues (excluding weapons and drugs) are that the IEP teams do not identify manifestations when suspending more than ten days. The district conducts professional development regularly and all manifestation determinations are now reviewed by a compliance coordinating teacher before being sent to the discipline office.

> We watch manifestation reviews carefully, being careful that someone from outside the school is representing the ESE department. Schools have had some concerns about a behavior being said to be a manifestation of the child's handicapping condition just because the paperwork is not correct but having them returned to the school is acting as a 'wake up call' and they are finding more efficient ways to keep IEPs up to date and implemented.

> It is very expensive to create effective alternative educational settings, and once they are in place, it is difficult to keep the student population a good mix of disabled and non-disabled students.
>
> Teachers, even ESE teachers, are feeling more threatened today by students, even when the behavior that seems frightening is pretty much standard ESE behavior. This leads to more requests by teachers for students to be excluded.
>
> (Interviews with District ESE Administrators, 2003)

Five of the nine principals interviewed in this study indicated that the IDEA 1997 disciplinary mandates have significantly changed their ways of work. Some of the changes mentioned were

- Restrictions on out of school suspensions have caused us to have to create increased alternative placements for students chronically disruptive in the general education classroom.
- "The restriction on out of school suspensions allows some students to hide behind their exceptionality rather than facing the natural school consequences for their behavior" ("Interview responses from Principals", 2003-2004). A frustration with this dual discipline system was mentioned by five of nine of the principals in this study.

- Teachers of students with disabilities "spend an inordinate amount of time as data gatherers and secretaries."
- "Many times students are aware of the limitations places on school personnel and this compromises the ability to control, change, mold or assign consequences to the severely unruly student" ("Interview responses from Principals", 2003-2004).

Other areas of concern include:

> Our district has "…added steps to our processes in dealing with recurring behavior issues. While the intent of the required meetings (manifestation, FBA) is to protect the student's rights and to develop plans to address the problems, the meetings carry with them very involved paperwork that creates an additional burden to staff."

> ESE students who are continuously disruptive/defiant and the fact that we are so limited in what we can do to address the problems. If we identify an ESE student who needs a more restrictive environment (i.e. center placement), it may take a semester (or more) to accomplish the change. In the meantime we must use consequences other than suspension for the instances of misconduct or disruption. This causes problems in other areas of the school (ABC rooms, in-school suspension classrooms or office areas) when the students are held there and become disruptive in those areas.

> Limited suspension days for ESE students results in the assignment of lesser consequences for serious misconduct - e.g. fighting, defiance, insubordination, threats, etc. In an effort to conserve suspension days, we use other alternatives such as ABC or in-school suspension. Often when an ESE student commits an act against another student (e.g. battery or serious threat), the consequence is less than it would have been for a regular education student, and sometimes the parent of the victim questions the "light" consequence. Due to the need for confidentiality, we cannot explain that the consequence was determined because the student who caused the problem was an ESE student.
>
> (Interview responses from Principals, 2003)

All the principals feel adequately trained and know which staff members to contact if they have questions about IDEA student discipline issues or need assistance in this area. All have what they consider as easy access to legal support when necessary. The perceived impact on ways of work may vary according to the numbers of assisting staff at the school such as assistant principals, deans and department chairs. IDEA discipline related duties, while consistently in compliance with the law, were handled by a variety of school staff members across the districts.

Minority Overrepresentation

School discipline information broken down by race and disability is not generally available in the three districts. A 1991 study of suspended students conducted in Pinellas County "revealed that black students were suspended at a disproportionately high rate relative to their representation in the school population" (Iachini, Mortimer, Schwarts, and Fisher, 1991, p. 58). The researchers correlated race, socio-economic status (SES), reading achievement and the age of the student relative to grade level with out of school suspensions in an attempt to determine which of the variables were "most predictive of suspension" (Iachini et at, 1991, p. 81). It appeared in that study that:

> "The suspension of a student was most directly affected by SES, such that students with low SES scores tended to be suspended. Suspension was also affected by a student's age and reading achievement…The effect of SES on age and reading achievement is notable and suggests that students with low SES scores tend to be overage and have relatively low reading achievement scores…Race can be regarded as a factor related to suspension when it is viewed as a variable strongly correlated with SES, that is, a variable whose relationship to suspension is mediated by SES (Iachini et al, 1991, p. 81)." The study did not consider…whether students were disabled or non-disabled.

Student Discipline Data

Staff in the three school districts study, compile and report student discipline information disaggregated in different ways. A summary of information regarding available out of school suspensions is included only to provide a snapshot of some facets of the use of out of school suspension in each of the three public school systems. This data is not adequate to lead to any speculation or conclusions about the organizations and their disciplinary practices.

CHARLOTTE-MECKLENBERG –

During the 2000-01 school year in North Carolina, the following statistics about student discipline were gathered:

- In the 2000-01 state report a long term suspension (LTS) is defined as a suspension which:

  > lasts from eleven days up to the remainder of the school year. It is possible for a student to receive more than one long term suspension during a school year…Districts may allow students to attend an alternative learning program or alternative school (ALP) during their long term suspension (Public Schools of North Carolina, 2000-01, p. 2).

- "In both 1999-2000 and 2000-01, special status students (e.g. students receiving special education services, Limited English Proficient student,

etc.) accounted for almost one in every five LTSs. The number of LTSs given to special status students, however, increased from 441 in 1999-2000 to 530 in 2000-01" (Public Schools of North Carolina, 2001, p. ii).

- In 1999-2000 5% of all expulsions in North Carolina Public Schools involved students with disabilities and in 2000-01, the special education population accounted for 19% of all expulsions (Public Schools of North Carolina, 2000-01, p. iii).
- In Charlotte-Mecklenburg Schools, during the 1999-2000 school year no long term suspensions or expulsions occurred (Public Schools of North Carolina, 2000-01, Appendix D-1).
- In Charlotte-Mecklenburg Schools, during the 2000-01 school year there were 151 long term suspensions assigned and no expulsions occurred (Public Schools of North Carolina, 2001, Appendix E-3).
- The long term suspension differs in North Carolina from an expulsion because when expelled "the student cannot return to their home school or any school, ever…An expulsion is usually reserved for cases where the student is at least 14 years of age and presents a clear danger to self or others" (Public Schools of North Carolina, 2000-01, p. 3).
- The following caution is included in the North Carolina report:

The Use of Data to Stereotype Students

> The data in this report indicate that suspensions, expulsions, and ALP placements are increasing overall, and that certain subgroups of students are disproportionately represented in those events. However, these data should not be used to label or stereotype any student. The fact remains that the majority of students – of any age, gender, or ethnicity – will never commit an offense resulting in suspension or expulsion from school. Rather, these data should be used by schools and districts as an impetus to examine disciplinary policies for equity, to target prevention efforts on vulnerable subgroups, to study ways to provide earlier intervention, and to explore a broader array of services for students, including those provided by community groups and agencies, that address both academic and non-academic needs. (Public Schools of North Carolina, 2000-01, p. 7).

INDIANAPOLIS –

The Indiana State Board of Education Schools Report for Indianapolis Public Schools reflects a decrease in the number of out-of-school suspensions assigned. In reviewing the seventy-seven IPS school reports that included three years of suspension information it was noted that in 1998-99 the total was 6,689, in 1999-2000 the total decreased to 5,722 and dropped again to 5,000 in 2000-01. The report does not reflect the number of suspensions assigned to students with disabilities.

PINELLAS COUNTY –

During the 2002-03 school year, of the 125,868 Pre-Kindergarten – Adult students, 21,516 (or approximately 21%) were students with disabilities. The most populated category of exceptionality was specific learning disabilities (9,382 students). Six thousand three hundred forty six of the students with disabilities were black, 278 were Asian, 1,112 were Hispanic, 54 were Indian (Native American), 543 were of mixed races and 13,159 were white.

Approximately 36% (8,367) of the 23,370 suspensions assigned during the 2002-03 school year were to students with disabilities. Students with specific learning disabilities were assigned more out-of-school suspensions than students with other disabilities. Students in ninth grade, disabled and non-disabled were assigned out-of-school suspensions more than students in any other grade. Sixty-nine percent (16,186) of the suspensions were assigned to males. The most frequent behaviors that led to out-of-school suspensions during 2002-03 were Defiance and Insubordination (3,966), Repeated Misconduct (2,720) and Fighting (2,659). (Appendix B).

After reviewing school board policies and related documents that speak to school discipline and students with disabilities from the three selected districts it was determined that the IDEA, 1997 language related to students with disabilities and out of school suspension placement in alternative education settings, manifestation reviews, and the "stay put" provision of previously unidentified students has been interpreted into almost identical school board policies in the three examined school districts.

Summary of Data Analysis

The focus of this study was the lack of substantive information about school board policies and related documents created to implement the disciplinary provisions of the 1997 reauthorization of IDEA, as they existed until May 2003. Although several studies were conducted wherein various state departments of education were surveyed, collected data is lacking at the school district level, where actual implementation occurs. To address this gap the researcher reviewed the school board policies and related school district documents in the Pinellas County School District, Florida, Charlotte-Mecklenburg, Schools, North Carolina and Indianapolis Public Schools, Indiana.

It was discovered that school board policies in the three, urban, K-12, public school districts were very similar and, in many cases, drew language directly from the IDEA. In each district additional documents were developed to provide more detailed instruction to the school based educators working directly with students having disabilities and their families. Staff in the three school districts were knowledgeable of the IDEA provisions and where to go for assistance within their organization. Administrators and attorneys stated that their responsibilities in the area of student discipline have expanded since the 1997 reauthorization and that more of their time and the time of their staff is used addressing special education disciplinary issues. School principals reported concerns about the amount of time teachers of students with disabilities must spend gathering and maintaining data and the dual discipline system created by the 1997 mandates. The attorneys and district level administrators working in the IDEA compliance area discussed concerns about training staff appropriately to

conduct manifestation reviews and provide adequate Alternative Education Settings that include students with and without disabilities.

Chapter Five

Summary, Observations, Conclusions and Implications

Statement of the Problem

The focus of this study is to determine how the 1997 IDEA reauthorization mandates regarding student discipline have been interpreted and implemented in three similar, urban, public school districts and how that implementation is perceived by selected staff members. The selected school districts were Pinellas County Schools, Florida, Charlotte-Mecklenberg Schools, North Carolina and Indianapolis Public Schools, Indiana.

Legal History

The Individuals with Disabilities Education Act (IDEA) was enacted in 1990 to replace the Education for all Handicapped Children Act (Public Law 94-142). IDEA guaranteed a free, appropriate education to all children with disabilities and strengthened the procedural safeguards for the families of these children. Federal dollars were committed to assist states to meet the mandates.

When IDEA was reauthorized in 1997 the following consistent themes emerged:

- Strengthening parental participation in the educational process;
- Accountability for students' participation and success in the general education curriculum and mastery of IEP goals and objectives;
- Remediation of behavior problems in school and in the classroom; and

- Responsiveness to the growing needs of an increasingly diverse society…(PCSB "Administrator Packet", 2000, p. 1-1)

The Reauthorization of IDEA and accompanying federal regulations emphasize the responsibilities of school personnel to address the behavior of a student with a disability. If that behavior is impeding the learning of the student or that of other students IDEA requires:

- The IEP team, including the general education teacher, if appropriate, plays a key role in addressing the behavior needs of students.
- A focus on the strengths of the student
- Use of positive behavioral strategies
- Use of Functional Behavior Assessments (FBAs) and Behavior Intervention Plans (BIPs)
- The use of alternatives to suspension and expulsion whenever feasible
- The provision of a free, appropriate education (FAPE) to students; services may not be terminated even when a student is expelled (PCSB "Administrator Packet", 2000, p. 8-1).

Purpose of the Study and Research Questions

The purpose of this collective case study was to examine perceptions of the implementation in three large, urban, K-12, public school districts of 1997 IDEA

mandates related to student discipline as they existed until May 2003 by reviewing policies and procedures in those districts. The research questions addressed are:

1. In the three school districts how were the mandates interpreted and what school board policies were developed to implement them? How were these policies similar or dissimilar? To address this inquiry I reviewed, compared and contrasted the relevant school board policies from the three school districts to ascertain whether the federal laws were interpreted in the same manner and whether common ways of work were created in the three states. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the Pinellas County School District, also reviewed the policies to validate my findings.
2. In the three selected school districts, what guidelines other than school board policies were put into place to ensure compliance with the laws and policies related to the exclusion from school of students with disabilities for disciplinary reasons? In this instance I collected, reviewed and compared documents prepared by staff members in the three districts that dealt with directions to those addressing school discipline of students with disabilities on a daily basis. These included Codes of Student Conduct or Exceptional Education Department Guidelines for Student Discipline and other district documents that may or may not have been adopted as policy by their school board.
3. In the three school districts what did the attorney employed by the school district, a district administrator in the exceptional education department

and three principals in schools of different levels and with a median number of students with disabilities in their schools report to be their perception of the primary issues they encountered in the area of disciplining students with disabilities since the 1997 reauthorization of IDEA and through May 2003? This information was obtained through interviews with the identified individuals and in some cases submitted written responses from the interview questions. Interviews in Pinellas County, FL were face to face and interviews in North Carolina and Indiana were primarily conducted by telephone. I asked what issues they dealt with most frequently in this area of their job and whether dealing with this law and the related policies had significantly changed their way of work and if so, how? Prior to the interviews, questions were developed. Dr. Allen Mortimer, Director of Planning and Policy in the Research and Accountability Department of the Pinellas County School District reviewed these questions. Dr. Mortimer must approve any survey conducted in the Pinellas County School District and works with individuals within and outside the district as they develop surveys and questionnaires to use in schools. After Dr. Mortimer's review the questions were piloted on staff members of the Pinellas County School District (one district administrator, one attorney and one principal) and finalized. After review, pilot and adjustment, questions (See Appendix A), were mailed to the interviewees and appointments were scheduled for the interviews. Interviews were conducted and responses were added to

the data utilized in the study. In two instances answers to the protocol questions were submitted in written form and a conversation did not occur.

Participants

The three school districts selected for inclusion in this study are similar in that each serves an urban community and educates from 40,000 to 112,000 students. All of the districts have, within the past decade, operated under the supervision of a federal desegregation court order and are functioning now within relatively new school choice pupil assignment plans. The Brown v Board of Education Supreme Court decision in 1954 terminated officially sanctioned segregation. "From the mid 1960's to the late 1970's a vast transformation took place in American public schools as federal courts and governmental agencies demanded race-conscious policies in every facet of school operations. The most controversial aspect of school desegregation during this period involved the rules for assigning students to schools" (Armor and Rosell, 2001, pp. 219-220). "In the 1971 Swann decision for Charlotte-Mecklenburg, North Carolina, the Supreme Court endorsed strict racial balance quotas for all schools in a system and approved cross-district mandatory busing to attain complete racial balance" (Armor and Rosell, 2001, p. 224). Many large school districts subsequently came under similar federal court orders. Green et al v. County School Board of New Kent County et al. was a Virginia case decided by the Supreme Court in May 1968 and set forth what became known as the Green factors ("Green et al. v. County", 1968). The Green factors were "six desegregation plan components – student assignment, faculty, staff, facilities, transportation, and extra curricular activities…All school systems under court order had

to show they had complied with each of them before they could be declared unitary (non discriminating) systems and released from court orders" (Armor and Rosell, 2001, p. 220). Balancing those similarities it is significant that each of the chosen school districts is located in a different state.

Pinellas County, Florida is a large (112,000 K-12 students), urban school district that is just beginning to operate without the restrictions of a federal desegregation court order. The Pinellas County school district was placed under a federal desegregation order in 1971. To comply with the mandates of that order a complex pupil assignment zoning system with regular rotations from zone to zone in some areas was established. The school board, in 1998, after listening to parents who wanted stability in their children's school assignment, directed Superintendent J. Howard Hinesley to seek unitary status. After lengthy negotiations with the NAACP Legal Defense Fund (a party in the original law suit) agreement was reached to request the lifting of the court order and in August 2000, unitary status was granted. A controlled CHOICE student assignment plan was instituted in August 2003 with the plan for an expanded CHOICE plan to begin in 2007 (Janssen, 2001, pp. 119-120).

Charlotte-Mecklenburg Schools, North Carolina also operated under a desegregation court order. It was in the 1971 Swann v. Charlotte-Mecklenburg Board of Education Supreme Court decision that "a desegregated school was defined as one whose racial composition is roughly the same as the racial composition of the entire school system" (Armor and Rosell, 2001, p. 232). The Charlotte-Mecklenburg School District operated under the 1971 federal court order until 1975 when the judge lifted it, believing that adequate progress in the move toward racial balance was being made (CMS "The

History of", 2003, p. 2). "While the system was focused on student achievement, the issue of student assignment resurfaced" when a parent "sued CMS, claiming that his daughter was denied enrollment to…a magnet school because she was not black" (CMS "The History of", 2003, p. 3). The Swann case was reactivated in 1998 and, finally, in September 1999, CMS was declared unitary but the court "mandated that a new student assignment plan be in place for the 2000-2001 school year" (CMS "The History of.", 2003, p. 3). CMS returned to court asking for an additional year to put in place the new student assignment plan. That request was granted, however, in 2000 "The 4th Circuit Court of Appeals ruled that CMS is not unitary in some areas such as facilities, student assignment and transportation and sent them back to the lower court for reconsideration. Areas such as faculty, staff and extra curricular activities and student discipline were considered unitary" (CMS "The History of.", 2003, p. 4). It was not until September 2001 that the "Fourth Circuit Court of Appeals affirmed an earlier court ruling that CMS has achieved unitary status and ordered the Board of Education to operate the school system without regard to the desegregation order no later than the 2002-2003 school year" (CMS "The History of", 2003, p. 5). The Charlotte-Mecklenburg school district is among the top 25 largest school systems in the nation, with over 105,000 students.

Indianapolis Public Schools, Indiana similarly has operated under a desegregation court order. The Indianapolis Public School district, according to current Superintendent Pat Pritchett "was found (to be) operating a segregated school system" (Schneider, 1999, p. 1) in 1971 and was placed under a federal court order which remained in place until 1998 (U.S. Department of Justice, 1998). The Indianapolis Public School System educates over 42,000 students and employs more than 5,000 people.

Methodology

The approach of this study was through a collective case study as suggested by Yin (1994) in Case Study Research, Second Edition. This collective case study examined the impact of 1997 IDEA reauthorization regulations (a contemporary phenomenon) as they existed through May 2003 within the context of three practicing large K-12 public school districts. Triangulation of data sources occurred through the consideration of school board policies, other current district documents and interviews of practicing educators and attorneys in three school districts.

Triangulation involves the use of various methods and sources to validate findings. Jick described triangulation as "the weakness of one method being offset by the strengths of another (Jick, 1979, p. 604)." Triangulation in this study was accomplished through the consideration of archival documents, current documents (1997 IDEA mandates), current documents (school district policies and procedural documents) and interviews of practicing educators and attorneys in the three large, urban public school districts.

Summary of Findings

Seven years after the 1997 reauthorization of IDEA there appears to be strong, consistent compliance with the major student discipline related mandates of the law in the three large, urban, K-12 public school districts that were studied. School board policies have been adopted in each of the districts with language often drawn from the law itself. A number of supplementary documents designed to assist teachers and school based administrators as they deal with school misconduct by students with disabilities have

been created in all of the studied school districts. Some of these supplementary documents (i.e. Handbooks, Administrator Packets, or Service Manuals) are adopted as school board policy and some are not. All of these documents are annually updated to reflect current case law and other legal adjustments. It would not be accurate to say that the documents are in the hands of every staff person dealing directly with students with disabilities but they are located at each school site and are readily accessible.

Extensive training in the area of school discipline and students with disabilities occurs throughout the school year in all of the examined districts. District staff and the attorneys (in-house or contracted) who deal with the district's IDEA legal challenges provide this training. The attorneys for the school districts cited concerns about correctly conducted manifestation reviews and the need to continue to create additional alternative educational settings as they deal with more offenses involving weapons, aggression and increasingly serious offenses committed by younger students with disabilities. All of the attorneys stated that more of their time is spent on placement issues than on disciplinary issues.

District administrators who deal extensively with compliance issues in this arena also reported concerns about the manifestation review process as well as appropriate and timely use of Functional Behavior Assessments and Behavior Intervention Plans. There was at least one district administrator who expressed worry about the cost of alternative educational settings and the struggle to keep those populations from becoming exclusively students with disabilities. Members of this group also talked about changes in the teachers of students with disabilities. References were made to teachers expressing fear of students, even when the student behaviors being exhibited are behaviors that have

been linked to certain disabilities (i.e. emotional handicaps) for decades. Instances were cited where student defiance was perceived as threatening behavior and voiced concern about the lack of adequate viable alternative settings.

More than half of the nine principals who contributed information to this study stated that their ways of work have significantly changed since the 1997 IDEA reauthorization. Noted were the need to implement a less than consistent, dual student discipline system, the teacher time that must be spent gathering and maintaining data and the reality of feeling that they must keep too many disruptive students in classes to the detriment of other students' learning. More secondary than elementary principals voiced this concern. One principal stated, "Although each student's exceptionality should be recognized and accommodated, teachers and schools should have much more latitude to modify situations. By utilizing our own personal judgment, particularly with discipline, we could create a more realistic and productive educational atmosphere for our ESE students" ("Interviews with Principals", 2003-04).

Conclusions

Staff in the three school districts that served as the population for this study know the 1997 IDEA reauthorization mandates related to student discipline and compliance seems to be the rule. In fact it appears that compliance is the focus of most conversations between educators about students with disabilities. There was little brought up about the impact of these compliance steps on students with or without disabilities. Much of the compliance concern centers around program placement as well as disciplinary matters. Educators and school board members in the three targeted school districts have

constructed school board policies and procedural documents that reflect the language of the IDEA 1997 reauthorization mandates. Various handbooks and manuals are available at school sites and school based administrators and teachers are exposed to training in the procedural requirements. It appears that a great deal of time is expended in the development of these detailed documents and the training of school based administrators. All of the documents reviewed and interviews with staff members lead to the conclusion that, whatever questions or concerns are present about the appropriateness of the law as it stands, there is a clear commitment to compliance. It was less evident that school based staff believe the compliance steps are best educational practice.

The legal history of educating students with disabilities in America makes it clear that the public education system required a legal push to truly open its doors to the student with disabilities. Whether the law in this area has become better or worse for school districts as it has expanded is largely a matter of one's perspective. The educators contacted in this study expressed empathy and caring for students with disabilities but seemed unconvinced that the current state of the law is best for students with disabilities or for the school environment as a whole.

IDEA is currently awaiting reauthorization again. Two of the issues being debated are increasing federal funding for states as they reshape their school districts to meet IDEA requirements and greater flexibility for school administrators when dealing with misconduct by students with disabilities.

An analysis of the data collected in this study makes it clear that in the three public urban school districts reviewed there has been a decision to comply with the 1997 Individuals with Disabilities Education Act student discipline mandates. In each of the

districts, school board policies have been created that mirror the law to a great extent. Additionally, staff in each of the districts have created handbooks or manuals, which delineate the rights of students with disabilities and provide guidelines for school based administrators. These documents are put into the schools, and into the hands of students and parents annually. Training of staff about district expectations with regard to compliance with these mandates is ongoing in all three school districts. School based administrators report that they are knowledgeable of the 1997 IDEA requirements relative to student discipline and know who to contact within their system if they have questions.

In spite of this compliance, however, five of the nine principals contributing to this study expressed concerns about implementing the dual student discipline system created by the 1997 IDEA disciplinary mandates, the increased paperwork and meeting demands placed upon their teachers. These concerns, occurring at the level most closely interacting with students, lead me to the conclusion that additional study would be helpful to determine whether the disciplinary protections for student with disabilities are actually leading to increased academic achievement for these same students.

It seems evident that each of the groups interviewed "experience" the law in different ways depending upon their responsibilities.

Minority overrepresentation was a factor that arose during the review of the literature. It was not possible to obtain relevant student information from the Charlotte-Mecklenburg or Indianapolis school districts regarding this issue for this study. Pinellas County demonstrated this overrepresentation in its 2003-04 ninth grade class. African American students comprised 20.8% of the population and 33% of those students were

identified as students with disabilities. Additionally, 79.2% of these students were not African American and of that group only 15% were identified. This tiny snapshot of information should not be used to make any assumptions about the school district, but does reflect concerns found in some of the reviewed literature.

Implications for Further Research

The following implications for further research are suggested by this study:

1. A longitudinal study should be undertaken to track students with disabilities who demonstrate serious misconduct early in their school career to see if there is evidence that the current disciplinary safeguards ultimately result in greater academic success.
2. Research similar to that of this study should be conducted with populations of small, rural public school districts or suburban public school districts in different states.
3. A study of the models of and results from alternative educational settings in place for students with disabilities at elementary, middle and high school levels in similar districts is needed to both provide information and models for educators.
4. A longitudinal study should be undertaken to look at African American students with disabilities and other students with disabilities in the same exceptional education category, with similar backgrounds, and in the same school system to see how comparable their school experiences are.

5. An in depth study of the attitudes of teachers regarding the IDEA 1997 mandates related to student discipline would be interesting. This would include elementary and secondary teachers who teach students with and without disabilities.
6. When reviewing student discipline data, how do definitions of "disrespect", "defiance" and other categories of misconduct compare between districts.

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Appendix A

State and District Demographics

Appendix A

State and District Demographics

Location	Public Schools	Pre K-12 Schools	Minority Students	Children in Poverty	Students with Disabilities
Florida	3,231	2,500,000	46.5%	14.0%	15.0%
Pinellas County Schools (2001-02)	144	111,272	29.6%	36.0%	20.0%
North Carolina	2,192	1,304,000	39.0%	19.4%	13.9%
Charlotte-Mecklenburg Schools (2001-02)	138	105,172	55.5%	37.8%	11.4%
Indiana	1,882	995,000	16.4%	14.1%	15.7%
Indianapolis Public Schools (2001-02)	79	40,515	69.0%	63.0%	17.0%

Information obtained from Florida Facts at a Glance, 2003, PCSB Facts, 2001-02, North Carolina Facts at a Glance, 2003, CSM The History of Public Schools in Charlotte-Mecklenburg, 2003, Indiana Facts at a Glance, 2003

Appendix B:

Protocols for Principals, District Administrators and School Board Attorneys

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Appendix B

Criteria for Principal Selection

Principals in Charlotte-Mecklenburg were selected by the Superintendent.

Principals in Pinellas County were selected by the writer of this study.

Principals in Indianapolis were selected through the Education Law Association.

Appendix B (Continued)

Protocol for Principals

A. Biographical (You will not be identified by name, school or district in the paper)

1. Years in education: _____
2. Years at current position: _____

B. Grades served at your school: _____

C. What is the total student population at your school?

D. How many special education students do you have in your student population?

E. Do you have inclusion? _____ self-contained? _____ both? _____

F. What special education categories are represented in your student body?

G. What special education/student discipline issue have you dealt with most frequently during the past two years?

H. How is that issue addressed in your district?

I. What has been the most critical special education/student discipline issue you have confronted during the past five years?

J. Have the 1997 IDEA laws and resulting district policies significantly changed your way of work? If so, how?

K. Is there anything else you would like to add to a paper dealing with the impact of IDEA regulations on school districts?

Appendix B (Continued)

Protocol for District Administrators for Special Education

A. Biographical (You will not be identified by name or district in the paper)

1. Years in education: _____
2. Years in current position: _____

B. Number of schools in your district: _____

C. What is the student population in your district?

D. What is the special education population in your district?

E. How many staff members are there in your district's special education department?

F. How were your school board policies related to the implementation of IDEA developed?

1. Who had input?
2. Have they been adjusted since they were first enacted?
3. If so, what significant changes have been made?

G. Who develops the guidelines for school staff to use when dealing with the school discipline of special education students?

H. Who carries out the training for school staff in the discipline of special education students?

I. Who conducts the manifestation reviews for students when they have been recommended for a disciplinary consequence that would remove them from their school for more than 10 school days?

J. What special education/student discipline issue have you dealt with most frequently during the past two school years?

K. How is that issue addressed in your district?

L. What has been the most critical special education/student discipline issue you have confronted during the past five school years?

M. Have the 1997 IDEA laws and resulting district policies significantly changed your way of work? If so, how?

Protocol for District Administrators for Special Education (Continued)

N. Is there anything else you would like to add to a paper dealing with the impact of IDEA mandates dealing with student discipline on school districts?

Appendix B (Continued)

Protocol for School Board Attorneys

A. Biographical (You will not be identified in the paper by name or district)

1. Years as an attorney working with education issues: _____
2. Years in current position: _____

B. How many attorneys are employed by the school district in which you work?

C. Has that number increased since 1997?

D. What is your interaction, as a rule, with the Exceptional Education Department?

1. Do you interact most often with certain individuals? Who are they and what are their positions?

2. What is the nature of most of those interactions?

3. How often do you interact with staff at schools about issues related to exceptional educations and student discipline?

4. Are you involved at all with the training of school staff about IDEA provisions related to student discipline?

E. What exceptional education/student discipline issues have you dealt with most frequently during the past two school years?

F. How is that issue addressed in your district?

G. What has been the most critical or interesting exceptional education/student discipline issue you have confronted during the past five school years?

H. Have the 1997 IDEA mandates regarding the discipline of students with disabilities significantly changed your way of work? If so, how?

I. Is there anything else you would like to add to a paper dealing with the impact of 1997 IDEA mandates dealing with student discipline on school districts?

Appendix C

Pinellas County Schools 2002-2003 Student Information

Appendix C

Rate of Out of School Suspensions by Offense for Students
Without and With Disabilities

Pre-Kindergarten through Grade 12 Students without disabilities = 92,542 students

Pre-Kindergarten through Grade 12 Students with disabilities = 20,209 students

Offense	Rate per 10,000/ESE	Rate per 10,000/Non-ESE
Alcohol	6	6
Arson	less than 1	2
Battery on an Adult	135	9
Battery on a Student	285	69
Breaking and Entering	0	1
Bus Misconduct	24	8
Cheating	3	4
Class or Campus	459	30
Disruption		
Defiance	727	268
Drugs	65	35
Electronic Devices	less than 1	less than 1
Fighting	470	184
Forgery	11	7
Unauthorized Location	35	17
Lack of Cooperation	128	62
Leaving Campus	70	59
Missed Detention	48	30
Missed Saturday School	196	136
P.E. Misconduct	2	less than 1
Profanity	398	151
Repeated Misconduct	480	187

Appendix C (Continued)

Rate of Out of School Suspensions by Offense for Students
Without and With Disabilities (Continued)

Offense	Rate per 10,000/ESE	Rate per 10,000/Non-ESE
Robbery	2	1
Sex Offenses	9	3
Sexual Battery	4	1
Sexual Harassment	26	9
Skipping Class	55	22
Stealing	64	29
Threat or Intimidation	126	29
Tobacco	18	16
Vandalism	25	11
Weapons	42	15

Summary: During 2002-03, in Pinellas County Public Schools, Out of School Suspensions were assigned to students with disabilities at a rate of 414 per 10,000 students while suspensions were assigned to students without disabilities at a rate of 162 per 10,000 students.

About the Author

Nancy Styles Zambito received a Bachelors Degree in Education from the University of Central Florida in 1971 and a Masters Degree in Education from the same university in 1980. She has taught students in grades three through 12 in Lake County, Florida where she also worked as a high school assistant principal and an elementary school principal. From 1980-1983 Ms. Zambito worked as a consultant for the Florida Department of Education's Professional Practices Section and has delivered workshops to administrators across the state in the areas of Effective Teacher Evaluation and Dealing with Ineffective Employees. She was the Director of Personnel Services for the Pinellas County School District in Florida where she is currently employed as Director of School Operations. Ms. Zambito has taught education courses for Nova University, has made numerous conference presentations and has testified as an expert witness in areas of the implementation of school law during many legal proceedings in Florida.