

2006

An analysis of the legal contexts of Public Education Law: Its judicial interpretations and applications with regard to discipline and special education and non-special education students in K-12 public schools

Janet Marie Roland
University of South Florida

Follow this and additional works at: <https://digitalcommons.usf.edu/etd>



Part of the [American Studies Commons](#)

Scholar Commons Citation

Roland, Janet Marie, "An analysis of the legal contexts of Public Education Law: Its judicial interpretations and applications with regard to discipline and special education and non-special education students in K-12 public schools" (2006). *USF Tampa Graduate Theses and Dissertations*.
<https://digitalcommons.usf.edu/etd/2679>

This Dissertation is brought to you for free and open access by the USF Graduate Theses and Dissertations at Digital Commons @ University of South Florida. It has been accepted for inclusion in USF Tampa Graduate Theses and Dissertations by an authorized administrator of Digital Commons @ University of South Florida. For more information, please contact digitalcommons@usf.edu.

An Analysis of the Legal Contexts of Public Education Law: Its Judicial Interpretations
and Applications with Regard to Discipline and Special Education and Non-special
Education Students in K-12 Public Schools

by

Janet Marie Roland

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Education
Department of Leadership Development
College of Education
University of South Florida

Co-Major Professor: Arthur Shapiro, Ph.D.
Co-Major Professor: Steve Permuth, Ed.D.
Member: William Benjamin, Ph.D.
Member: Barbara Loeding, Ph.D.

Date of Approval:
March 06, 2006

Keywords: Behavior, School Law, ESE students, Expulsions, Suspensions

© Copyright 2006, Janet Marie Roland

Dedication

To my parents, Hubert and Helen Roland, who guided me through life so that I might become the person I am today. To my children, Lindsay Landram and Adam Huffine, for always believing that Mom could do anything, and for bringing sunshine and chaos into my life everyday. To the very special man in my life, Jerry Hernandez, for his love and patience, and for showing me that making the journey is as important as reaching the destination. To Dr. Patricia Lucas for teaching me to think outside the box and to never compromise on what is best for children. And to George Corombos, for always being there and for being a very special friend and colleague.

Acknowledgments

I would like to express my sincere gratitude to Drs. Arthur Shapiro, Steve Permuth, William Benjamin and Barbara Loeding of the University of South Florida. During the time I was a graduate student under their supervision, their confidence in me never waned. Their constant encouragement and guidance made this dissertation a reality.

Dr. Arthur Shapiro, as cochairman of my doctoral committee, provided expertise that allowed me to gain an understanding of research methodology and to apply it to educational research. Dr. Shapiro's sense of humor will be forever remembered.

Dr. Steve Permuth, cochairman of my doctoral committee, provided expertise and insight into the area of educational law. His constant encouragement to "dig deeper" and "look closer" allowed me to gain a true understanding of the interpretation and application of educational laws on the day to day operations of public schools.

Dr. William Benjamin has provided the expertise in policymaking and educational leadership necessary for me to bring all of the pieces of the legislative puzzle together. His wisdom and perspectives on this process has proved to be invaluable.

Dr. Barbara Loeding's knowledge and understanding of issues facing students with disabilities and those who teach them has been insightful during this study. Her willingness to travel from Lakeland to Tampa to meet with me has been greatly appreciated.

I wish to thank all of my committee members for their unwavering confidence in me and for validating the importance of this study.

Table of Contents

List of Tables.....	v
Abstract.....	vi
Chapter One: Introduction	
Problem.....	1
Purpose.....	3
Research Questions.....	4
Educational Negotiation.....	5
Background and Significance.....	6
Civil Rights.....	7
Educational Discrimination.....	8
Special Education Prior to the 1970's.....	10
Maintaining Discipline in Schools.....	12
Constitutional System.....	13
Statutes.....	15
System of Public Schools.....	17
Five Purposes of Law.....	18
History of Public School Laws.....	18
Discrimination in Education.....	19
Racial Discrimination.....	20
Socioeconomic Discrimination.....	21
Discrimination by Social Class.....	21
Language and Ethnicity Discrimination.....	22
Gender Bias.....	22
Disability Discrimination.....	23
Courts.....	25
Implications of Recent Supreme Court Appointments.....	26
Equal Protection.....	27
Reauthorization of IDEA, 1997.....	29
Zero Tolerance.....	29
Provision for Alternative ESE Services.....	30
Methods of Qualitative Research.....	32
Historical Method of Research.....	32
Case Law.....	34

Definition of Terms.....	35
Limitations.....	39
Summary.....	40
Laws Regulating Discrimination.....	40
Reauthorizations of IDEA.....	41
School Safety.....	42
Implications for Preferential Treatment.....	42
Organization of the Study.....	45

Chapter Two: Review of Literature

Introduction.....	47
School Socialization.....	48
Equal Opportunity.....	48
<i>Tinker v Des Moines School District</i>	49
Socialization Within School.....	49
Racial Discrimination.....	51
Minority Statistics.....	53
Socioeconomic Discrimination.....	54
Discrimination Based on Language and Ethnicity.....	55
Gender Bias.....	56
Discrimination Based on Disability.....	56
Passage of PL 94-142.....	59
Case of Rowley (1982).....	60
Current Legislation.....	61
Individuals With Disabilities Education Improvement Act (IDEA) of 2004 (PL 94-142).....	61
Zero Tolerance Legislation.....	63
Rights, Laws and Ethics.....	66
Question of Discipline.....	69
Suspension and/or Expulsion as Change of Placement.....	72
Reauthorization of IDEA.....	75
Due Process.....	76
Mandated Procedures.....	78
Final Regulations.....	80
Funding Issues.....	82
Summary.....	83

Chapter Three: Method

Problem.....	85
Purpose.....	86
Research Questions.....	87
Purpose of Research.....	89

Methods of Knowing.....	89
Deductive and Inductive Reasoning.....	91
Rationalism and Empiricism.....	92
Scientific Method of Research.....	93
Quantitative v. Qualitative.....	93
Historical Method.....	95
Exploratory Research.....	96
Descriptive Research.....	97
Reliability and Validity.....	97
Summary.....	99

Chapter Four: Findings

Introduction.....	102
Review of Educational Laws.....	102
Court Case Review.....	106
Judicial Districts.....	113
Research Questions.....	115
Surveys.....	119
Summary.....	121

Chapter Five: Summary, Observations, Conclusions and Implications

Introduction.....	128
Problem.....	129
Purpose.....	130
Research Questions.....	131
Method.....	132
Legal History.....	134
School Compliance.....	140
Observations.....	140
Summary of Findings.....	143
Conclusions.....	150
Implications.....	153
Implications for School Policy.....	154
Recommendations for Further Research.....	155
References.....	157
Bibliography.....	165

Appendices.....	177
Appendix A: Legal Citations of Cases Used in Court Reviews.....	178
About the Author.....	End Page

List of Tables

Table 1	Court Findings by Student Offense.....	110
Table 2	Court Findings by Litigation Issue.....	114
Table 3	Court Findings by Federal Judicial Circuit.....	118
Table 4	Teacher Survey Responses.....	123

An Analysis of the Legal Contexts of Public Education Law: Its Judicial Interpretations
and Applications with Regard to Discipline and Special Education and Non-special
Education Students in K-12 Public Schools

Janet Marie Roland

ABSTRACT

This study investigated legal implications of differential disciplinary treatment of special education and non-special education students in K-12 public schools. It focused on interpreting and applying federal and state education legislation by courts and how various judicial decisions affect discipline practices in public school systems, asking if preferential treatment was afforded to students with disabilities through implementation and interpretation of educational legislation.

The historical myriad of complex legislation passed before and after inception of Public Law 94-142 in 1975 was studied, exploring relationships between school discipline of children who do and do not receive special education services. Research included review of pertinent books, journal articles, published and unpublished papers, and personal communications with experts in education and law. It identified appellate court cases dealing with school discipline and compared rulings. Law and education authorities were interviewed. Surveys were developed and administered to discern teachers' understanding of educational legislation. It attempted to formulate a theory addressing consistencies and inconsistencies associated with public school discipline, along with reinforcement of that treatment by the United States court system, offering

implications and recommendations for practice and for further research. Emphasizing data collection from primary and secondary documents, this study took a historical perspective.

Conclusions indicate that school compliance is directly tied to financial mandates and that school-based personnel have little discretionary power disciplining students with disabilities. School officials are caught between attempts to keep schools safe and complying with federal and state mandates to avoid forfeiting allocated funds. Many teachers feel unsafe at schools attributing that feeling to inability to control students' classroom behavior. Inabilities stem from inequities in consequences for discipline infractions by students with and without disabilities, inequities that have court precedents.

Implications are that, based on the number of cases filed on behalf of students without disabilities, parents are seeking similar rights for their children as those of children with disabilities. Numbers indicate cases involving students with disabilities are resolved at lower levels of due process. Inequities are advocated by issuing various mandates and funding/compliance guidelines serving to strip local school districts of their ability to maintain and self-regulate schools.

Chapter One

Introduction & Problem

Throughout American history, public schools have functioned as an “agency of socialization and social control” (Shipman, 1975, p.14). As such, schools have continued to evolve in response to the pressures placed upon them by the social organizations they serve. In response to these social pressures, schools continue to change and become more specialized, attempting to develop specific programs for the various student populations (Spring, 2004). The framework for the social molding of students has resulted from the need for the state “to intervene in the lives of children by helping to socialize them into what otherwise would appear as confusing, incoherent, and normless social environments” (Durkheim, 1998, p. 203).

Problem

Such interventions, along with the enactment of laws meant to equalize the opportunities of various populations, perpetuate differential treatment throughout American society. There are questions as to the nature and scope of these differences and to how this differential treatment affects the operation of our public schools.

This differential treatment results in an inequity in education between those students with disabilities and those without. This essential inequity, states Kelman and Lester in *Jumping the Queue* (1998, p.16), is ...”flowing from their right to be spared the

consequences of prejudice against their disability.” They define this special treatment as “substantial discipline immunity” (p. 195).

Appellate courts have ruled that serious violations of school rules by students without disabilities may result in a denial of public education through suspensions and/or expulsions while the same violations by students with disabilities must result in no cessation of educational services. This educational inequity with regard to the disciplining of students with disabilities, and their access to public education, has demonstrated itself through legal court rulings and given rise to possible legal and ethical issues.

The Individuals with Disabilities Education Act (IDEA, 1997, 2004) ensures all students with disabilities a Free and Appropriate Public Education (FAPE) regardless of their misbehaviors in school. Osborne and Russo, 2003 state, “to protect their rights to a free appropriate public education, however, and to ensure that those with behavioral disorders are not excluded from the educational process because of the very disabilities the IDEA sought to address, special procedures must be followed beyond those that are implemented for most students.”

These procedures are an attempt to adhere to government mandates while continuing to maintain a safe and orderly school environment. In addition, these procedures result in a set of different standards for various subpopulations of students in our public schools. The ramifications of employing these differing standards have not been well studied. A question remains as to the existence and extent of legal and/or ethical implications resulting from the inequities within the system.

Purpose

The purpose of this study was to investigate the legal standing of differential disciplinary treatment of special education and non-special education students in K-12 public schools. The focus of this study was on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems. An emphasis was placed on any preferential treatment afforded to students with disabilities through the implementation and interpretation of educational legislation. With school discipline as a major concern in today's school systems, the study's focus was in this area.

This study delved into the myriad of complex legislation passed before and after the inception of Public Law 94-142 in 1975. It studied the relationships between the school discipline of children who receive special education services and those who do not. It searched the consistencies and inconsistencies in the treatment of these populations of students in school settings. It identified court cases dealing with school discipline and it provided a comparison of the rulings. It utilized interviews of outstanding authorities in the areas of law and education (e.g. school administrators, Department of Education specialists, and university professors specializing in the areas of educational law and finance) and developed and utilized surveys to discern understanding of various pieces of educational legislation by parents, students, and school officials. Research questions and survey items were developed in collaboration with members of this doctoral committee.

Finally, it attempted to formulate a theory that addresses the consistencies and inconsistencies in the treatment of children in public schools, along with the

reinforcement of that treatment by the United States court system, and offers implications and recommendations for practice and for further research. Using the historical method of research, it afforded an overall historical perspective on legislation for students with disabilities, beginning with PL 94-142.

Research Questions

The following research questions were derived from both the problem and the purpose of this study. Consultations with members of my doctoral committee resulted in the approved research questions used. Given the focus of this study on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems, these questions were determined to be appropriate. An emphasis was placed on any preferential treatment afforded to students with disabilities, through the implementation and interpretation of educational legislation. With school discipline as a major concern in today's school systems, the research questions focused on these areas.

1. What is the standing of legislation regarding the differential discipline of students with disabilities as compared with the non-disabled students?
2. What is the standing of the courts' decisions regarding the differential discipline of students with disabilities as compared with the non-disabled students?
3. What are the consistencies and inconsistencies in the treatment of students with disabilities as compared with non-disabled students?
4. Do legislation and court decisions appear to foster differential treatment of certain populations of students in school?

5. To what degree do legislation and court decisions appear to impact differential treatment of students in school settings?

6. How does the law impact the behavior and discipline of students with disabilities?

7. Is there a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues?

Educational Negotiation

The social framework of education varies, dependant upon which party wields the most political power at any one time. Stein, in *The Culture of Education Policy* (2004, p. 26) states, “Popular and scholarly conceptions of children, poverty, disadvantage, and government intervention at the historical moment of policymaking are central to understanding the cultural norms and practices engendered by equity-oriented education policies.” She continues, “The priorities of a particular period in time shape the cultural dimensions of policy initiation and adaptation” (p. 16).

Thus, the schools enter into periods of educational negotiation. In educational negotiation, resources such as wealth, power, or expertise are exchanged by the various interest groups involved. As in any transaction, success goes to the party with the most powerful negotiating strength. As a result of the negotiating process, the succeeding party emerges with additional power and control. “By constructing a condition as a problem, society names the condition, the government responds to group interests associated with the condition, and these responses (through actions and language) affect the condition,

making it either better or worse” (Stein, 2004, p. 9). The final outcome of the negotiations results in the weaker group operating in a state of dependency, or reciprocity in relation to one another and to education. “The language of policy reveals who is dominant, who is subordinate, and what controls the dominant should exercise on the subordinate in order to effect desired change” (Stein, 2004, p.5). Once the successful educational interest groups have emerged with major negotiating strength, they remain active in future negotiations addressing educational change. These negotiations generally center on various dimensions of quality.

Background and Significance

In the early 19th century, Americans came to see education as a wherewithal to progress, good citizenship, and individual “enrichment.” The educator Horace Mann said that education is “the great equalizer of men...It does better than to disarm the poor of their hostility toward the rich, it prevents being poor” (Degler, 1984, p. 171).

Shipman (1975) finds that, in American society, the quality of education received is thought to be a direct determining factor in the quality of adult life, occupational ability, and social status obtained. American society tends to directly link the equality of opportunity and the equality of educational opportunity even though the distinctions are clear. The quality of education received does not directly correlate with the opportunities available in adult society (Spring, 2005). The tendency to link the two together results from the possibility of both improvements in social and economic benefits, given the “right opportunity.”

Civil Rights

[C]ivil rights were defined in relation to the common law. Here proponents of equality drew on the language of the Declaration on Independence. Civil rights were those rights that allowed people to protect their lives and liberties, and to pursue happiness or, in some versions, property. Without the equal enforcement of criminal laws, for example, the lives and property of blacks would always be at risk (Tushnet, 1988, p. 226).

Both equality of opportunity and the equality of educational opportunity have often been associated with the ongoing struggle for increased personal, or civil rights as granted under the Fourteenth Amendment to the Constitution (Spring, 2005). Civil-rights refers to the right to an equal opportunity to gain economic and social advantages, and equal treatment by the law. This is a fundamental right guaranteed to all citizens by the Fourteenth Amendment, regardless of their racial or ethnic background, gender, age, sexual orientation, or disabling condition.

Reams (1975), believes “The general objectives of the Fourteenth Amendment are hardly open to debate. Emancipation had removed the bondman’s shackles but it had provided him few of the protections enjoyed by free men” (p. vii.) The Fourteenth Amendment, Section 1 states

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and 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.

Reams, 1975, in *Segregation and the Fourteenth Amendment in the States*, believes a violation of civil rights to be the depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and

immunities under the laws. In America, the socialization process has been characterized by the continual struggle for various groups to attain this equality of opportunity and treatment through the promotion and protection of their civil rights. Civil rights equalization has usually consisted of minimizing the disparities between various classes of citizens (Spring, 2005).

Disparity in treatment within school populations often refers to those students categorized as either special education students or non-special education students. Other civil rights violations in schools might be based upon gender, race, language or ethnicity, and social class. The attainment of civil rights in education is believed by many to directly relate to economic and personal success in adult society (Shipman, 1975). “In most states there is little persuasive evidence that legislators ever considered the impact of the Fourteenth Amendment upon public education” (Reams, 1975, p. viii).

The school “has become the agency fulfilling or frustrating individual ambitions. Allocation to a particular class within it, the quality of teaching and the response to it, the strength of motivation determining the use made of ability, all help to determine not only attainments in schools, but position in adult life” (Shipman, 1975, p. 13). Many believe that equality of educational opportunity is a prerequisite for equality of opportunity. American public schools, therefore, bear an almost impossible burden upon their shoulders.

Educational Discrimination

In education, the right to equal opportunity to education has been a longstanding battle against various forms of discrimination. All groups have not had equal access to

public schooling, in many cases as a result of specific laws (Spring, 2005). Prior to 1954, there were laws that required segregation by race in public schools (Alexander & Alexander, 2006). Laws were required to extinguish the discriminatory educational practices against children from homes where English is not the spoken language, those children from low socio-economic backgrounds or who were homeless, children who happened to be females, and those children with disabilities which required special provisions to accommodate their special needs. Even tracking, or placement of students in certain programs, or denial of students to access certain programs, may constitute denial of educational opportunities. Hence, equality of educational opportunity can also refer to the treatment of students once they have achieved access to the educational system (Spring, 2004).

As a result of the long battle against discrimination in public schools, the federal government intervened with the passage of several laws such as the Civil Rights Act of 1964, the Elementary and Secondary Education Act (ESEA) of 1965, the Higher Education Act of 1972, and the Education for all Handicapped Children Act (EAHCA), commonly referred to as Public Law 94-142 (PL 94-142) that was passed in 1975. Passage of this legislation has resulted in increased litigation, additional restrictions on the use of federal monies, and increased scrutiny of programs by local, state and federal agencies. Federal legislation will most likely continue to affect public education through its involvement and regulation of local school systems, but changing political attitudes will affect its level of importance within American society (Spring, 2005) as it strives “to

address the inherent and necessary inequities in the structure of capitalist economic and social arrangements” (Stein, 2004, p.19).

Special Education Prior to the 1970’s

The philosophy of education toward children with disabilities evolved through many different phases (Reams, 1975). It appears that the late 1800’s was the beginning of the first phase. During this phase, students with disabilities were taught in separate classes to help relieve the stress on the teachers and other students. During the early 1900’s, if children with disabilities were sent to school at all, they continued to be segregated into watered down curriculums with an emphasis on training for menial jobs (Rothstein, 1990). After the *Brown v. Board of Education* decision dealing with integration in schools, the educational philosophy for dealing with students with disabilities began to enter a new, developmental phase. It was felt that “the stigma attached to being educated separately and the deprivation of interaction with children of other backgrounds” (Rothstein, 1990, p.12) resulted in unequal treatment. This unequal treatment was in direct violation of the Fourteenth Amendment of the Constitution that guarantees every citizen safety from deprivation of “life, liberty, or property, without due process of law,” and guarantees “equal protection of the laws.”

As a result of this decision, the concept of mainstreaming students was developed. This effort to educate students with disabilities in regular classrooms was a parallel effort to integrate all students in the schools (Rothstein, 1990, p.12).

Most of the special education legislation passed during the 1960’s and early 1970’s consisted of grant programs which provided incentives for educating students

with disabilities but really did not contain specific guidelines for implementation or methods of enforcement. Rothstein, in *History of Special Education Law*, (1990, p.12) states, "Identification and placement of children with disabilities was haphazard, inconsistent, and generally inappropriate. African-American, Hispanic, and some other ethnic groups were often stereotyped and disproportionately placed in special education programs."

The passage of civil rights legislation aided in the enactment of legislation designed to insure equal opportunity of education to those children with disabilities in public schools. When major special education legislation was passed in the form of the Education for all Handicapped Children Act (EAHCA), or PL 94-142, its purpose was to bring the discriminatory educational practices toward students with disabilities to an end.

PL 94-142 was the catalyst used to force state and local school systems to rewrite policy and procedures for students receiving exceptional student education (ESE) services. Its goal was to provide a free and appropriate public education (FAPE) to all students, regardless of their disabilities. Indeed, at this time, PL 94-142 was the only weapon available to parents and ESE advocates securing an appropriate public education for those children with disabilities (Ysseldyke, Algozzine, & Thurlow, 2000). Since PL 94-142, numerous additional pieces of federal and state legislation have been passed with the goal of preserving and promoting the educational rights of students with various disabilities. Quite often, these rights are in conflict with regular school disciplinary policies and guidelines.

Maintaining Discipline in Schools

Maintaining discipline in schools is a challenge for all school systems. 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 been identified as having disabilities, since all identified ESE students have the right to a free and appropriate public education (FAPE) without unnecessary interruptions in their individualized educational programs. This right may be impacted by the suspensions and expulsions typically used to discipline inappropriate behaviors of those students without disabilities (Duval County Public Schools, 2000).

This study explored the pervasive influences federal and state education legislation has on school systems. It examined the history and scope of legislation passed with regard to students with disabilities and behavioral issues in public schools. Proponents of students without disabilities are arguing that laws passed to protect students with disabilities have actually tipped the educational scale in their favor. Some believe the protection afforded to these students with regard to behavior and due process far outweighs that available to students without disabilities and their families (Hill & Madey, 1983). Kelman and Lester, 1998, feel that certain students have the ability to block efforts to discipline them for disruptive behaviors in the classroom.

Due to the complex methods of obtaining funding for students with disabilities, and the prohibitive costs of conducting due process proceedings for school districts, the concept of equitable access to educational opportunities for these students is a central

concept among perspectives from which the results of this study are viewed. The literature of the following disciplines was examined for its contribution to understanding these problems as they relate to the issues surrounding discipline in public schools: (1) history of federal and state legislation governing the rights of students with disabilities; (2) current trends in providing a safe school environment for all and in providing a policy of zero tolerance for certain discipline offenses; (3) interpretation of federal and state legislation governing student discipline as reflected in a variety of court cases; (4) compliance with federal and state legislation based on loss of district funding rather than on equity in district policies for all students.

Constitutional System

The United States is governed fundamentally by a constitutional system of laws (e.g. statutory, case, criminal). In *School Law: Theoretical and Case Perspectives* (1987), Menacker feels the U.S. Constitution

...provides the framework in which government operates, the powers of the government and its branches, and the relationship of government to the people, including civil-rights protections found in various constitutional amendments. The constitution provides a broad framework, which leaves considerable leeway for interpretation and flexibility to allow the courts to apply constitutional tenets to current issues not envisioned by the Founding Fathers.

The U.S. Constitution is silent regarding education, leaving that area to the states, by virtue of the Tenth Amendment. Therefore, the constitution of each state represents the basic source of education law for its jurisdiction, provided it does not conflict with the national Constitution. Each state has provided, with varying degrees of specificity, for a state system of public education. Courts, legislatures, or executive officials cannot tamper with this basic framework. The only way to change a constitutional provision is through amendment or replacement of the constitution with a new one, in the manner prescribed within it (pp. 12-13). Mead (1987), believes

Constitutionalism represents...an effort to place certain checks and limits upon the powers of government so that the people's liberties do not depend merely upon the good will or voluntary self-restraint of those who govern. There are two ways in which such limits can be placed upon the government. The first is to divide the governing power among groups with different interests so that each part of the government represents a 'check and balance' against excesses from other parts of the government. In the second approach to constitutionalism, the powers of government are limited by a strong consensus and commitment to basic liberties on behalf of a social group, external to the government, but upon whom the government depends for its support (p. 6).

It is from this system, or framework, that basic laws are generated. This constitutional system is comprised of the written constitutions of the federal government and of each of the fifty states. These constitutions contain provisions that serve as restraints to afford constituents protection of their constitutional rights and freedoms.

The most important and distinguishing feature of constitutionalism is the concept of *limited government*. Those nations that are truly "constitutional" are those whose people feel strongly enough about certain basic values or rights—such as freedom of religion, expression, and political involvement—that, by popular consent, they make it clear to their governments that no governmental action can legitimately infringe upon those values. In such political systems, fundamental freedoms are not left merely to the discretion of a governing body. Put another way, the question of what, if any, limits are to be placed upon the government is not left to be decided by the government itself (that is internally) but is addressed by the people (in this sense, externally) (Mead, 1987, pp. 3-4).

[This system] is essentially the failsafe of our Constitution (S. Permuth, personal communication, January 11, 2006).

In addition to this protection, one of the most important aspects of an effective constitution is the ability to be flexible and to provide a systematic process for change (Alexander & Alexander, 2006). Permuth believes the Fourteenth Amendment to be the heart of the Constitution. He considers it to be the mechanism that drives constitutional litigation (S. Permuth, personal communication, January 11, 2006).

Constitutionalism, understood as government limited by the fundamental values or freedoms of the people, assumes a distinction between the majority rule expressed in the day-by-day decisions of government and the popular, but more enduring and fundamental, consensus that *restrains* the day-by-day decisions of the government, even the decisions of a democratic majority (Mead, 1987, p. 4).

William Gladstone, in Mead's *The U.S. Constitution* (1987) describes the United States Constitution as "...the most wonderful work ever struck off at a given time by the brain and purpose of man" (p.7).

Statutes

States are given the powers to enact their own legislation through the implementation of statutes. A statute is a piece of legislation that expresses the "will" of the governmental body and constitutes a law of the state. Statutes serve to implement legislative constructs. They are usually passed in response to a particular issue that requires definition by a general framework (Alexander & Alexander, 2006).

Administrative agencies within the states have the job of developing appropriate regulations that reflect the guidelines provided for in the statutes. These regulations, if they are developed within the guidelines of the statutes, carry the weight of the law (Rothstein, 1990). Statutes are routinely reviewed by courts to determine their constitutionality; however, because statutes are "merely words," a court's interpretation may actually affect the meaning of the legislation (Alexander & Alexander, 2006).

W. Blackstone states in Alexander and Alexander's *American Public School Law* (2006), that "[the] doctrine of the law then is this: that precedents and rules be followed, unless flatly absurd or unjust; for though their reason be not obvious at first view, yet we

owe such a deference to former times as not to suppose that they acted wholly without consideration” (p. 8). Alexander and Alexander continue

The general American doctrine as applied to courts of last resort is that a court is not inexorably bound by its own precedents but will follow the rule of law which it has established in earlier cases, unless clearly convinced that the rule was originally erroneous or is no longer sound because of changing conditions and that more good than harm will come by departing from precedent (p. 8).

Administrative bodies develop regulatory guidelines as well. These guidelines provide suggestions as to how the laws administered by the various agencies should be interpreted. These guidelines do not carry the weight of the law but are respected by the courts. It is this system of checks and balances that aids in the protection of those constitutional rights afforded to everyone.

Prior to the 19th century, in many western nations, the law was applied differently to different classes of the population. For instance, the aristocracy was usually given preferential treatment under the law. Spring, in *American Education: An Introduction to Social and Political Aspects* (2005), sees equality before the law regarding education as meaning simply that if a government has a law that provides free public education, then all classes of citizens should have equal access to that public education. The Fourteenth Amendment to the United States Constitution laid the groundwork for Spring’s view concerning education.

The Fourteenth Amendment was aimed specifically at state imposed disabilities which burdened most Black Americans. They were subjected to heavier penalties than whites for the same crimes. They were incompetent to testify in court, even where their own interests were in issue. They could not make contracts, nor own property, nor sue in the courts, nor travel freely from state to state. They were denied the basic privilege of seeking employment by which they might earn a

living. In this context, the prospect of education in a tax-supported, racially integrated school may have seemed remote and esoteric (Reams, 1975, p. xi).

System of Public Schools

The public school system in the United States is founded on legislative provisions for a system of education. These provisions provide the groundwork for public school law with the courts acting as the interpreters of the will of the legislature. Until recently, courts were reluctant to interfere with the judgment of school officials because public education has been considered to be a privilege bestowed by the state (Spring, 2004). A combination of both federal and state constitutions, statutes, and court (or case) law forms the “primary legal foundation on which the public schools are based” (Alexander & Alexander, 2006, p. 2). The Tenth Amendment to the Constitution states that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

Since public schools have no inherent powers of their own, they must rely on both constitutional and statutory law for the authority to operate. “The Legislature, therefore, has the power to enact any legislation in regard to the conduct, control, and regulation of the public free schools, which does not deny to the citizen the Constitutional right to enjoy life and liberty, to pursue happiness and to acquire property” (*Flory v. Smith*, 145 Va. 164, 134 S.E. 360 [1926]).

One of the virtues of the American Constitution, and particularly the Fourteenth Amendment, is its capacity to respond to the specific needs of a particular time in a manner that is consistent with both the traditions and the objectives of Americans. Thus, while the intent and understanding of the framers may have been incomplete or immature with respect to particular problems that have subsequently emerged, that intent and understanding continue to be relevant in the

process of developing the standards by which those problems are to be solved (Reams, 1975, p. xi).

Five Purposes of Law

Law serves five basic purposes: “[1] preservation of the public peace and safety; [2] the settlement of individual disputes; [3] the maintenance of security of expectations; [4] the resolution of conflicting social interests; and [5] the channeling of social change” (Alexander & Alexander, 2006, p. 6).

The resolution of conflicting social interests is one of the ways in which law helps to channel the forces of social change--- and some of the law’s ends-in-view can come into collision with others, as when law’s adjustment to social change involves some unavoidable impairment of the security of individual expectations. In law as in ethics, the hardest task is often not the identification of values, but the assignment of priorities when, in a specific problem context, one value cannot be fully served without some sacrifice of another. But even and particularly when values cut across one another, disinterested and informed judgment on legal and social problems requires that each of the competing ends-in-view be understood in its full claim as an aspect or dimension of what law is for: the creation or preservation of a social environment in which to the degree manageable in a complex and imperfect world, the quality of human life can be spirited, improving and impaired (Alexander & Alexander, 2001, pp. 6-7: Reprinted with permission, Colum.L.Rev 1023, 1031-32 ,1974).

History of Public School Laws

As far back as the 1600’s, Degler (1984) states, laws have been enacted in America to ensure access to public schooling and the financial means to support it. Even then, powerful special interest groups such as the Puritans sought to control public education through the passage of local laws. In 1644, the New Haven colony appointed citizens to collect monetary “contributions” from each family to support Harvard College. In New England, school laws dictated that for each town with fifty or more families a

schoolteacher must be hired. Embedded in the public ideal of education was the need to teach children to read so that they may read the Bible and grow up to be good citizens.

Following the Civil War, Spring (2003) continues, reconstruction legislatures devised systems to provide free public education to citizens in the South. Of course, up to this time education was meant to be accessible only to white children. It was thought that to educate blacks was a waste of time and effort, and possibly dangerous. Those white individuals who attempted to teach blacks were often attacked.

The government passed the legislation regarding education but seemed powerless. Reams, in *Segregation and the Fourteenth Amendment in the States* (1975) believes that “[e]ducation in a racially integrated public school may have been beyond the felt aspirations of the nearly emancipated Black citizen and those who sought to help him. He was likely to be concerned with more basic rights of American citizens” (p. x).

The government passed the legislation regarding education but seemed to have no power to enforce it. Enforcement of education laws rested with the individual states. Thus we saw a glimpse of the future in public education, the types of discrimination practiced, and the manner in which political strength influenced school legislation.

Discrimination in Education

It could be argued that discrimination in education has long been widespread in American public education (Alexander & Alexander, 2006). As American society continues to change, so do the populations of students targeted for discrimination.

Discrimination has been based upon race, socioeconomic status, language and ethnicity, gender, and disability (Spring, 2005).

Berube (1994) believes the government's answer to the problem of educational discrimination has been to pass legislation geared to the protection of individual civil rights. Courts have ruled that to deny a person equal opportunity to education is to infringe upon his civil rights as granted in the Constitution. As a result of these rulings, development and passage of this type of legislation has not been without turmoil.

Racial Discrimination

The struggle to promote and protect civil rights has resulted in the greatest impact on education through the process of desegregation (Spring, 2005). In segregation cases, the federal courts have been used as a means of providing equality of educational opportunity to minorities. In addition, the Office of Education became the policing agency that determined whether or not school systems were segregated, and by applying pressures to those systems deemed to be segregated, forced those systems to comply with the federal regulations.

Bolmeier (1976) believes minority children suffered as a result of the segregation of whites and minorities in public schools. By sanctioning segregation, the law helped to increase the detrimental impact upon the children. The policy of separating races can be interpreted as denoting the inferiority of the minority group and the motivation of a child to learn can be adversely affected by a sense of inferiority (Berube, 1976).

Supporting this belief Congress, in IDEA (2004), included statistics that reflect a disproportionate number of minority children eligible for special education services. In

Part A, Sec. 601©(12)(D) and (E), Congress states that “in the 1998-1999 school year, African-American children represented just 14.8 percent of the population aged 6 through 21, but comprised 20.2 percent of all children with disabilities. Studies have found that schools with predominately White students and teachers have placed disproportionately high numbers of their minority students into special education.”

Socioeconomic Discrimination

The mid-1960’s brought discrimination of another sort to the front lines as well. With the passage of the Elementary and Secondary Education Act (ESEA) in 1965, money was allocated to supplement the needs of children who resided in low socioeconomic areas where there was a concentration of low-income families. The focus of the act was on entitlement or compensatory programs. Often referred to as “Chapter 1 money”, this money was to be used to supplement students’ educational needs in areas of mathematics, reading, and language. These are categorized as “core” academic subjects and remain the focus of ESEA. If misused, federal government money allocated under Chapter 1 could be recovered from the states, as determined in *Bell v. NJ*, (1983).

Discrimination by Social Class

Concern shifted during the 1970’s from major concerns over racial differences to major concerns over socioeconomic differences. Socioeconomic differences had been deemed more important than differences in race, and concern became focused on the increased inequality in educational opportunities between social classes (Spring, 2004). Responding to the new emphasis on educational opportunities for those children in the

lower social classes, the government passed legislation to ensure their access to equality in education as well.

Language and Ethnicity Discrimination

1978 brought with it the passage of the Bilingual Education Act, which provided federal financial assistance for programs to aid limited English-speaking children. Title VI of the Civil Rights Act of 1964 prohibited discrimination on the basis of national origin or ethnicity. This particular act was tested by *Plyer v. Doe*, (1982), in which children of illegal aliens were excluded from public schools. The court found this exclusion to be a violation of the students' Fourteenth Amendment rights.

Gender Bias

Underwood and Mead (1995) describe gender bias as one of the subtlest forms of discrimination in education. A common type of discrimination, gender bias results in differences in the treatment and opportunities afforded male and female students. At times, the discrimination is obvious, such as the exclusion of females from athletics and other traditionally male activities. At other times, gender discrimination can be more subtle, exposing itself in areas such as course materials that continue to contain sexual stereotypes, test biases, and sexual harassment. Making changes to curriculum required formidable legal action.

In 1972, Title IX of the Higher Education Act expressly prohibited the exclusion of any person from participation in, denial of the benefits of, or subjection to discrimination on the basis of sex, under any educational program or activity receiving financial assistance from a federal agency. These might include areas including

scholarships, advanced academic programs, or extra curricular activities. In addition, Title IX prohibited discrimination on the grounds of pregnancy or marriage, resulting in numerous voluntary separate educational programs for pregnant girls (Underwood & Mead, 1995).

Disability Discrimination

While all of the above areas are of great interest, equity has long been a pervasive issue in public education with regard to students with exceptionalities. Equity in opportunity, instruction, facilities, and even disciplinary actions has been in question for many years. In fact, before the 1970's, most children with disabilities had no legally established right to a public education. Laws in many states expressed the belief that a child with disabilities "could not benefit from education and that his or her presence in the public schools would have an adverse effect on the welfare of the other students" (Johnson, 1986, p.1). As a result, most children with disabilities were expressly exempt from the state compulsory school attendance laws.

In 1919, in Wisconsin, a school board excluded a 13-year-old boy with a mental disability from school because "...his physical condition and ailment produces a depressing and nauseating effect upon the teachers and school children; ...he takes up an undue portion of the teachers time and attention, distracts attention of other pupils, and interferes generally with the discipline and progress of the school" *State ex rel. Beattie v. Board of Education*, (1919).

Even on those occasions where students have been allowed to attend public school, they have often been denied equal access to educational opportunities due to their

disabilities. Often it was due to the lack of provisions in public schools to accommodate their special needs. Those in wheelchairs were unable to maneuver through narrow doorways, hallways, or on stairs, and there were few ramps and elevators available for their use. Making physical changes to facilities was expensive when only a few would benefit from them.

When major legislation for students with disabilities was passed in 1975 in the form of PL-94-142, these students were to be considered as “regular” students with regard to public education. Boyle and Weishaar (2001) see this law as a response to outcries from parents of students with disabilities, and their advocates, that more than one million of these children were being excluded from the educational services other students without disabilities were receiving. In drafting PL 94-142, Congress found that many students with disabilities were being unsuccessful in school due to the lack of detection and identification of their disabilities. In addition, Boyle and Weishaar believe that of those students identified as having disabilities, and thus categorized as ESE students, many of their needs were not being met due to a lack of adequate services within the public school system. As a result of this lack of services, many families were forced to find services outside of the public school system at their own expense.

Indications that ESE students were continuing to be excluded from educational services were these unsettling findings of Congress in 1990:

Census data, national polls, and other studies have documented that people disadvantaged socially, vocationally, economically, and educationally...
[I]ndividuals with disabilities are a discrete and insular minority who have been faced with disabilities, as a group, occupy an inferior status in our society, and are severely with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our

society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

Lobbying by parents and advocates of these students has produced legal issues that have been settled only after having been taken before the courts. Spring (2005) cites increasing court involvement in education as a result of complaints concerning the violation of students' constitutional rights.

Courts

Courts provide three types of judicial functions: “(1) settle controversies by applying principles of law to a specific set of facts, (2) construe or interpret enactments of the legislature, and (3) determine the constitutionality of legislative or administrative actions” (Alexander & Alexander, 2006, p. 4). Courts are forced to make their decisions based upon the general rules from cases that are similar and they are bound by the interpretations of courts that are their superior. Constitutions, statutes, administrative regulations, and judicial decisions serve as sources for these rules and in the United States, the body of case law is made up of judicial decisions (Underwood & Mead, 1995). Precedents established in past cases form the groundwork for future decisions (Alexander & Alexander, 2006).

Although the Brown decision in 1954 was instrumental in “clearing the path” for special education law, much legislation has followed in an attempt to protect students with disabilities from discrimination in educational settings. One of the earliest decisions with regard to the passage of PL 94-142 resulted in a statement by the Justices of the United Supreme Court that “a court of law is equipped only to determine legal rights

established by statutes, precedents and rules of evidence. Within these limitations, a fair and just society may be fashioned. A perfect society, however, will not” (*Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982).

Implications of Recent Supreme Court Appointments

Two recent appointments have been made to the U.S. Supreme Court, the highest court in America. Both John Roberts and Sam Alito have been appointed to serve in the capacities of Chief Justice and Justice respectively. It is unclear to what extent the addition of these two Justices will affect decisions at the appellate court level (www.SCOTUSblog.com). A change in the overall liberal and conservative composition of the Supreme Court may alter the way lower courts will view educational issues.

Charles Frankel states in Menacker’s *School Law: Theoretical and Case Perspectives* (1987, p. 3) that

[T]o hold the liberal view...meant to believe in “progress.” It meant to believe that man could better his condition indefinitely by the application of his intelligence to his affairs; it meant, further, to measure the improvement of man in secular terms, in terms of his growth in knowledge, the diminution of pain and suffering, the increase in joy, the diffusion and refinement of the civilized arts; and it meant that such improvement could be brought about by deliberately adopting legislative and judicial techniques which could gradually change the institutions that framed men’s lives.

Justice Alito rendered an opinion in *Shore Regional High School Board of Education v. P.S.* (2004) where he ruled that “a school district did not provide a high school student with a free and appropriate public education, as required by the Individuals with Disabilities Education Act, when it failed to protect the student from bullying by fellow students who taunted the student based on his lack of athleticism and

his perceived sexual orientation.” This opinion indicates a conservative view toward the implementation of IDEA in public schools (www.SCOTUSblog.com).

Menacker (1987), sums up the issue of individual issues in court decisions by stating “[W]hether liberal or conservative...the court always reflects the personalities and attitudes of the men who are on the bench at a particular time. When the judges decide whether or not a law should stand, their own attitudes, philosophies and backgrounds shadow their legal decisions.”

Equal Protection

The question of what exactly constitutes a “fair and just society” in an educational sense has yet to be answered adequately. The Fourteenth Amendment to the Constitution states that “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.” Section 5 states that “Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” When rendering a decision in *Yick Wo v. Hopkins* (1886), the court stated “Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.”

Although states are given the latitude to develop their own mandates for insuring that the constructs of the Constitution are enforced, the terminology used by each state

varies. Many states use the term “uniformity” in education to mean “equal opportunity” in the drafting of educational legislation. Courts differ on the interpretation of the word “uniformity” when attempting to rule on issues of equality of opportunity to education. In *DuPree v. Alma School District No. 30* (1983), the Supreme Court of Arkansas determined that uniform programming, or “minimal education programs are not enough to satisfy the equal opportunity demanded by equal protection.”

Alexander & Alexander (2004), feel that government must be able to classify persons for the purposes of determining benefits, alleviating problems, or imposing damages. Governments, they continue, cannot create distinctions for purposes of discrimination. They state that “Some distinctions may be unimportant, while others may strike at the basic fabric of society and offend individuals and the common good of the state. Governmental discrimination is not in and of itself violative of equal protection unless the distinctions drawn affect ‘fundamental interests’ and ‘suspect’ classifications of people. Equal protection forbids only unreasonable discrimination...” (p. 901-902). The court in *Milkin v. Green* (1973), stated that “...‘equality’ is itself such an ephemeral concept that judicial review on an abstract ‘equality’ standard is bound to be unmanageable.” In conclusion, Alexander & Alexander (p. 902) state,

If disparate allocation of governmental benefits can be justified on a basis of reasonable classification or if the interests involved are not fundamental, then statutes will be regarded as constitutional. On the other hand, if a statute divides persons into suspect classes and if the benefits and detriments affect a fundamental interest, then the statute may be unconstitutional. On the other hand, if no fundamental interest is at stake, the effects of the disparity are by definition constitutionally inconsequential, and equal protection is not implicated.

Reauthorization of IDEA, 1997

In an effort to protect the civil rights of students with disabilities, and their families, more legislation has been passed. With the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997, the most progressive laws at that time found themselves onto the books. IDEA promotes more parental involvement and participation by regular education teachers in the development of a student's individual education plan (IEP). In addition, IDEA provides that students with disabilities are not to be punished for behavior that is a manifestation of the disability and that it is the responsibility of educators to work harder to manage the behavior of students with disabilities. Although the reauthorization of IDEA in 2004 brought changes, these precepts have remained the same.

Zero Tolerance

Ironically, however, legislation has also been passed which perpetuates the "zero tolerance" philosophy for schools with regard to weapons, drugs, and physical assaults. Pursuant to the Gun-Free Schools Act of 1994, each state receiving federal funding pursuant to the Elementary and Secondary Education Act (ESEA) must expel, for at least one year, any student who possesses a weapon on school grounds. As a result of this legislation, all fifty states have enacted their own legislation that mandates the immediate suspension, and possible expulsion, of students who possess weapons on school property. Commission of these offenses can result in suspensions of 10 days or more and, quite possibly, expulsions for students without disabilities resulting in a total cessation of educational services. Zero tolerance statements are in direct response to the public

outcries of citizens for safer school environments and personal accountability for student actions. The Phi Delta Kappa/Gallop Poll of the Public's Attitude toward the Public Schools (2001) reflected the top two perceived problems in public schools to be the lack of discipline/control and fighting, violence, and gangs.

Immediate action is taken by school authorities whenever a zero tolerance offense is committed by a student. The student is swiftly removed from the school setting and a predetermined set of discipline procedures are initiated. The controversy occurs at this point in that students with disabilities have the right to a free and appropriate public education (FAPE) without unnecessary interruptions in their educational programs.

At the Council for Exceptional Children's national conference on special education in July, 2000, members took offense to the zero tolerance policy and the fact that it does not take into consideration the reason the student brought a gun or other weapon to school or committed an act of violence. It was argued that to expel "troublemakers" with disabilities deprives those students of an education; an education guaranteed to them by both PL 94-142 and IDEA (1997, 2004).

Provision for Alternative ESE Services

Legislation has been passed that prohibits suspension of students with disabilities for periods longer than 10 days per school year without insuring a continuation of educational services, and expulsion of these students is prohibited altogether whenever the infraction is determined to be a manifestation of the disability (IDEA, 1997). Even if the infraction is determined not to be a manifestation of the disability, and the student goes through the expulsion procedure, IDEA (1997) states that the student must be

provided with alternative educational services for the duration of the expulsion. These statutes do not apply to students without disabilities who can be suspended and expelled upon violation of a school rule or criminal law with no provision for mandatory alternative educational services.

If a state fails to provide a policy for providing educational services to students with disabilities who have gone through the expulsion process, that state runs the risk of losing all federal funding provided under IDEA, part B (1997, 2004). This funding can amount to millions of dollars that are used to fund ESE programs in the local school systems. Under threat of losing these badly needed dollars, states have succumbed to the regulations dictated in IDEA, rather than seek uniformity in discipline policies for all students.

Even with the protection of IDEA, proponents of ESE rights feel that the zero tolerance policies infringe upon the rights of students with disabilities. ESE advocates feel that to impose the policy uniformly violates the rights of those students with behavioral problems. The perception of these groups maintains that, due to their disabilities and the protection afforded them under IDEA (1997, 2004) and current civil rights legislation, these students should be exempt from serious school disciplinary procedures. Hill and Madey, in *Educational Policymaking Through the Civil Justice System*, (1983), feel these statutes “provided for ways to make it easier and less expensive for the beneficiaries to initiate litigation to vindicate their rights than would be the case for the ordinary litigant” (p. iii).

Parents of students without disabilities "...believe it is unfair for their children to be suspended or expelled when they've engaged in behavior that is no more problematic than the behavior of a disabled child who is not disciplined in this severe fashion," (Kelman & Lester, 1998, p. 94). A study investigating the progression and equality of current legislation in this area is desirable because it can provide information necessary to aid in the balance of educational opportunities for all students.

Methods of Qualitative Research

Although research can follow many courses, this study lends itself to a qualitative design. Five methods are commonly found in qualitative research. These methods are the case study, ethnography, phenomenology, grounded theory, and historical study. The case study finds its roots in medicine and law and concentrates on finding the characteristics of a specific phenomenon (Ertmer, 2004). Ethnography, rooted in anthropology, focuses on the culture of a group of people, attempting to produce a holistic view of the context being studied (Wolcott, 1988). Phenomenology has philosophical roots, looking to determine the meaning of a specific experience for a group of people (Ertmer, 2004). Finding its roots in sociology, the grounded theory approach looks for theoretical constructs, themes, and patterns that are evidenced in collected data. The theory in this method actually takes shape as the data are collected and analyzed (Glazer & Strauss, 1967).

Historical Method of Research

The historical method of research aids in understanding a present condition by shedding light on the past. Cohen (1976) believes historical research might serve one of

several purposes. The first purpose might be called the “liberating function of history.” The purpose of this study would be “to liberate us from the burden of the past by helping us to understand it.” A second purpose of historical research is “to provide a moral framework for understanding the present. Study of the past reminds us of traditions that involved a defined moral and social order to which most members of a community subscribed” (Gall, Borg, & Gall, 2006, p. 643). Another purpose for using the historical method is to promote social reform proposals by finding corroborating evidence in the data collected. Historical research serves yet another purpose. It allows for the projection of future scenarios, and a prediction of their likelihood, by reviewing and evaluating the collected data (Gall, et al., 2006).

Historical research relies on data obtained from documents, oral history, and relics whose physical or visual properties provide information about the past (Gall, et al, 2006). Documentary research consists of any record “that contains information about human behavior, social conditions, and social processes” (Adams & Schvaneveldt, 1991, p. 287). This data can be categorized as having come from primary sources or from secondary sources. According to Adams and Schvaneveldt (1991), primary source data is information documented as a result of firsthand or eyewitness testimony of an event, while secondary source data may come from reports about an event by someone who did not witness it firsthand but was provided the information by someone who did.

With the emphasis on data collection from documents, this study took on the form of a historical perspective, utilizing current court cases at the Supreme Court and the appellate court levels. Friedman, in *A History of American Law* (2005, p. 3) believes

“[W]hen an American lawyer faces a legal problem, she normally considers two sources of legal authority: (1) statutes and (2) reports of appellate cases.” This form of historical perspective involves the gathering of primary data already contained in available documents. The historical perspective is appropriate for this study since it would be impracticable and time consuming to gather new primary data when usable data from secondary sources already exists and can be much more quickly analyzed.

Case law

Law developed in the courts is called case law. In the past, case law served as one means of establishing law before a great deal of statutory law existed. It was also known as common law because judges would deliver opinions incorporating the customs at the time. Still opinion, most judicially delivered law is no longer about customs; rather it serves to interpret constitutional laws or statutes as they apply to a specific set of circumstances (Rothstein, 1990). When the term “precedent” first developed, it “did not provide that a single decision was binding but rather that a line of decisions would not be overturned” state Alexander and Alexander (2006, p. 6). Today, case law serves to modify common law in ways to serve current societal needs.

The focus of the study was on case law, or common law. Described by Hogue in Alexander & Alexander, 2006, p. 2 as “...a body of general rules prescribing social conduct, enforced by ordinary...courts, and characterized by the development of its own principles in actual legal controversies, by the procedure of trial by jury, and by the doctrine of the supremacy of law.” Case law is easily researched because most judicial opinions are published as documents for public review.

Documents are especially useful in descriptive research, from a reliability and validity standpoint, because they are nonreactive, they do not change, they were prepared in many cases for research purposes, they typically do not stagnate, and researchers can use them in very creative ways (Adams & Schvaneveldt, 1991). Finally, using the historical method of research afforded an overall historical perspective on legislation for students with disabilities.

Definition of Terms

Appellate Court - A higher court which hears a case from a lower court on appeal (Alexander & Alexander, 2006).

Attention Deficit Hyperactivity Disorder - A condition usually found in male children, characterized by short attention span, impulsivity, and hyperactivity (Rapp, 1989).

Behavior Intervention Plan (BIP) - A specific written plan targeting specific student behaviors and the proposed interventions to be used to control or decrease the negative behaviors (Maloney, 1998).

Case Law - The interpretation or application of constitutions, statutes, or administrative regulations or the development of common law (Underwood. & Mead, 1995).

Change of Placement - A change in educational placement for a period of longer than ten school days (Maloney, 1998).

Common Law – A body of general rules prescribing social conduct (Alexander & Alexander, 2006).

Compensatory Education Legislation – Policy passed to implement programs that would compensate for the home environment and facilitate equality of results rather than

just equality of access to educational opportunities (Bennett deMarrais & LeCompte, 1998).

Consistencies - Degrees of solidity, or coherence in applying principles or a policy (*Merriam-Webster Dictionary*, 2004).

Disability – A summary of a great number of different functional limitations occurring in any population in any country of the world. People may be disabled by physical, intellectual or sensory impairment, medical conditions or mental illness. Such impairments, conditions or illnesses may be permanent or transitory in nature (http://www.dpa.org.sg/DPA/definition_disability.htm).

Due Process - Law in the regular course of administration through courts of justice, according to those rules and forms that have been established for the protection of private rights (Alexander & Alexander, 2006).

Equity - A system of law that affords a remedy where there is no complete or adequate remedy at law. A court of law assesses damages; a court of equity renders a decision in mandamus, injunction, or specific performance. A writ of mandamus is a command from a court of law directed to an inferior court, officer, corporate body, or person regarding him or them to do some particular thing (Alexander & Alexander, 2006).

Exceptional Student Education (ESE) - Specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability (Blackhurst & Berdine, 1981).

Expulsion - Denial of educational services at a public school for a specific period of time based upon violation of school rule or criminal law, to be determined at a hearing held by

the district school board (IDEA, 1997).

Free and Appropriate Public Education (FAPE) - Special education and related services that have been provided at public expense, under public supervision and direction, and without charge (PL 94-142, 1975).

Functional Behavior Assessment (FBA) - A written overview targeting a student's specific negative behaviors, including frequency of behaviors, observations, severity of behaviors, and anecdotes (Maloney, 1998).

Handicap – The loss or limitation of opportunities to take part in the life of the community on an equal level with other; the encounter between the person with a disability and the environment (http://www.dpa.org.sg/DPA/definitioon_disabililty.htm).

Handicap - A disadvantage that makes progress or success difficult when interacting with the environment (Blackhurst, & Berdine, 1981).

Inclusion – The integration of children with disabilities into regular classrooms (Spring, 2005).

Inconsistent – Self-contradictory, not in harmony, changing for no apparent reason (*Merriam-Webster Dictionary*, 2004).

Individuals With Disabilities Education Act (IDEA) - Public Law 94-142, renamed in 1991, and reauthorized in 1997 and 2004, to guarantee the right of all children with disabilities to a public school education.

Individual Education Program (IEP) - A written statement for each child with a disability developed in any meeting by an IEP team consisting of parents, child, school representatives, and any other relevant parties. The statement would include a statement

of the present levels of educational performance, annual goals and objectives, specific services to be provided, dates for initiation and duration of services, and evaluation procedures (Maloney, 1998).

Least Restrictive Environment (LRE) - Educational placement of a student with a disability, dependent upon the seriousness of a particular disability, and the student's ability to cope within a specific environment (Blackhurst & Berdine, 1981).

Mainstreaming - The placement of students with disabilities in classes containing regular education students (Olson & Platt, 2003).

Manifestation Determination - A meeting consisting of the staffing team, including parents and educators, which must be held to determine whether the student's misconduct is related to the disability and whether the current educational placement is appropriate (IDEA, 1997, 2004).

Revelation – An act of revealing or opening to view; the disclosing or discovering to others of what was before unknown to them (*Webster's Third New International Dictionary*, 2002).

Standing (Legal) – The right to file a lawsuit or file a petition under the circumstances. Example: A plaintiff will have standing to sue in federal court if (a) there is an actual controversy, (b) a federal statute gives the federal court jurisdiction, and (c) the parties are residents of different states or otherwise fit the constitutional requirements for federal court jurisdiction (<http://Dictionary.law.com>).

Stare decisis – “Let the decision stand”; a legal rule that when a court has decided a case by applying a legal principle to a set of facts, that court should stick by that principle and

apply it to all later cases with clearly similar facts unless there is a good reason not to. This rule helps promote fairness and reliability in judicial decision-making and is inherent in the American legal system (Fischer, Schimmel, & Kelly, 2002).

Statute – Law enacted by the legislative power of a country or state (Alexander & Alexander, 2006).

Stay Put Provision - A provision in the Individuals With Disabilities Education Act (IDEA, 1997) that allows the student to remain in his current school placement until a proper placement can be determined (Maloney, 1998).

Suspension- Removal of a student from school for normally up to ten school days, due to a violation of school rule or criminal law (Maloney, 1998).

Zero Reject - The inability of local school districts to exclude students with disabilities from public schools due to the nature or degree of their disabilities (Boyle & Weishaar, 2001).

Zero Tolerance - A policy instituted by school boards that provides for the expulsion of students for violent crimes and/or the possession of weapons or drugs on school campuses (Maloney, 1998).

Limitations

There are four basic limitations to this study. They are as follows:

(1) The study will be limited to educational legislation already enacted as opposed to that currently being discussed, and to litigation which has reached the appellate court level.

(2) It is important to acknowledge that the information gathered for this study is limited to the availability of data for public perusal.

(3) Persons chosen to participate in the surveys and interviews for this study were selected based upon their accessibility and knowledge of the issues.

(4) This is an initial study of the current legislation pertaining to students with disabilities in public schools. Care must be taken not to over-generalize from the reported findings because of the limitations of this study.

Summary

An everchanging social organization, schools continue in their efforts to develop America's children into productive, civic minded, academically oriented citizens as dictated by societal norms. There are many specialized programs within the schools that address the diverse student populations found within today's schools. Students with disabilities comprise probably the largest specialized student population within the schools and it is unclear exactly where they fit into the social framework of the school organization.

With the diverse populations schools serve, the burden of providing appropriate services continues to grow in complexity. State and federal governments continue to institute legislation in an attempt to provide funding for many of the special programs within schools as "the identification and maintenance of a deviant population eligible for assistance provides the opportunity to increase resources" (Stein, 2004, p. xiii).

Laws Regulating Discrimination

Concerns for the preservation of individual civil rights have resulted in the

passage of several laws regulating the discriminatory educational practices of the past. Laws have been passed with regard to discrimination based on race, language and ethnicity, socioeconomic status, gender and disability. Although students with disabilities make up only one of the populations that have been excluded from public education for various reasons, they are currently receiving the most attention.

Beginning with PL 94-142, advocates of students with disabilities have lobbied for and gained legislation that offers protection for those children with disabilities in a public school setting. First drafted in 1975, IDEA was amended in 1997 and again in 2004. It is the only civil rights law that provides federal funds to educational agencies if they agree to comply with the requirements of the law. Before these reauthorizations, students with disabilities who violated school rules or codes of conduct could be suspended for up to 10 days if such suspensions also applied to students without disabilities who engaged in the same behavior. With the amendments to IDEA, students with disabilities can be suspended for up to 10 days, at which time continuous educational services must be provided.

Reauthorizations of IDEA

With the reauthorization of IDEA in 1997, and again in 2004, careful monitoring of legislation with regards to students with disabilities has become a time consuming job for ESE advocates. They are careful to examine all legislation to make sure that no student with a disability is denied access to a free and appropriate public education (FAPE) as a result of any negative or inappropriate behavior that stems from a disability. Court cases abound which address these very issues. School systems find themselves

caught in a cycle of suspensions, manifestation hearings, due process procedures, and court cases.

School Safety

States are clamoring for zero tolerance in instances of drugs, weapons, and physical aggression in schools. Emphasis has been placed on maintaining a safe school environment, conducive to learning. Teachers are contending that their schools and classrooms are not safe due to the negative, disruptive, and often-violent behaviors of students. As a result of these contentions, schools have been forced to allocate valuable staff dollars to provide for on-site police or resource officers and, quite often, numerous civilian security personnel. Murray and Myers (1998) report that nationwide, 52,000 teachers were attacked in schools each month in 1993, with only nine percent actually reported to the police.

More funding is set aside to provide for the additional staff necessary to deal with the myriad of legal issues, procedures, and paperwork required when disciplining all students, especially those who are designated as ESE students. It is not unusual to find a special attorney on retainer for a school district simply to deal with ESE issues. ESE law has become a specialty among educational attorneys.

Implications of Preferential Treatment

Today the pendulum is shifting to a concern that students with disabilities are being provided preferential treatment, through enacted federal and state legislation, with regard to suspensions and expulsions resulting from an infraction of a school rule or criminal law. Many parents of students without disabilities are more and more frequently

demanding the same treatment for their children as that afforded to students with disabilities with regard to disciplinary consequences. They have observed as students without disabilities are suspended or expelled for committing infractions for which, when committing the same infractions, a student with a disability remains in school. Parents of these students feel that students with disabilities are provided preferential treatment over their non-disabled peers with regard to disciplinary consequences in public schools.

Although legislation has progressed far in the protection of educational rights for students with disabilities, legislation addressing the same issues for those without disabilities has been found to be less prevalent. A great number of cases brought before the courts recently have found in favor of students with disabilities and against those without disabilities. Of those brought before the courts on behalf of those students without disabilities seeking relief from suspensions or expulsions, the courts have found in favor of the school districts in several cases (*Anders v. Fort Wayne Community Schools*, 2000, *Doe v. Pulaski County Special School District*, 2000, *Remer v. Burlington Area School District, et. al.*, 2001, and *M.G. v. Independent School District Number 11 of Tulsa County Oklahoma*, 2000).

The maintenance of educational opportunities and equality between students with disabilities and their non-disabled peers has become a nationwide concern. Parents of both groups of students have become much more knowledgeable concerning the laws and the rights of their respective children. Schools districts across the nation are caught in a quagmire of legal requirements. Courts are being inundated with cases concerning due process and alleged violations of civil rights. "The evolution of the law gives new shape

to the public schools that emerge from the social forces that prescribe and portend the direction of the law” (Alexander & Alexander, 2006, p. xxxvii).

This study examined past federal and state legislation, current Supreme and appellate court cases, and relevant literature in an attempt to determine if there is justification for the above statement. It is hoped that this study can provide information necessary to aid in the balance of educational opportunities for all students.

Courts continue to find themselves called upon to interpret the many pieces of legislation passed in an effort to provide equity in educational opportunities. The difficulties lay within the implementation of the regulations governing special programs. Care is taken by both the federal and state governmental agencies to see that discrimination in the areas of age, gender, ethnicity and language, socioeconomic status, and disability is not practiced in educational programs. Specific legislation has been passed that addresses each of these areas. The legislation is often complex and finds itself open to interpretation by the courts.

The focus of this study was on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems. An emphasis was placed on any preferential treatment afforded to students with disabilities, through the implementation and interpretation of educational legislation. With school discipline as a major concern in today’s school systems, the study’s focus was in this area.

Research questions are outlined in this chapter and care is given to acknowledge any limitations to the study. Definitions for important terms are provided and

methodology is discussed. The study lends itself to a qualitative approach, focusing on historical research using both primary and secondary sources of information. Legal court documents, along with the legislation itself, were the primary sources of data collected. The study provided an overall historical perspective on federal and state legislation for students with disabilities and attempted to answer the research questions found within this chapter.

Organization of the Study

Chapter One provides an introduction along with an explanation of the problem to be studied and the purpose for focusing a study in this area. It offers background information, and a basis for significance of the study, followed by research questions. The method to be used is discussed, and definitions of important constructs are provided. The final three sections address the limitations of the study, a summary of the study, and organization of the study, respectively.

Chapter Two is dedicated to a review of the literature relevant to this study and covers the theoretical background for it, as well as offering an overview of various Supreme and appellate court cases that illustrate the courts' interpretation of federal and state legislation governing student discipline. In addition, documentation relating to compliance issues and funding is examined.

Chapter Three provides a historical overview of research methodology, focusing on qualitative methods and historical perspectives. The descriptive research design is examined, along with historical methods. The research design chosen for this particular study is discussed and the procedures for gathering the information are included.

Chapter Four examines court cases that have reached the appellate level, and compares and contrasts the findings as they relate to students with disabilities and those without. Infractions committed and disciplinary consequences received by students are the focus of the examination of cases before the courts. In addition, this chapter addresses the relationships in the findings determined through the literature review and the review of current litigation and other sources. It explains the findings in terms that relate to the educational process in public schools.

Chapter Five is reserved for an overview and summary of the study, along with conclusions, implications, and recommendations for practice and for further research.

Chapter Two

Review of Literature

Introduction

The purpose of this study was to examine issues of differential treatment under law, how it affects the discipline of different populations of students within the K-12 public school system, and its legal and ethical consequences. This study delved into the myriad of complex legislation passed before and after the inception of Public Law 94-142 in 1975. It studied the relationships between the school discipline of children who receive special education services and those who do not. It searched the consistencies and inconsistencies in the treatment of various populations of students in school settings.

Research included a review of pertinent books, journal articles, published and unpublished papers, and personal communications with experts in the fields of education and law. It identified court cases dealing with school discipline and it provided a comparison of the rulings. It developed and utilized interviews and surveys to discern understanding of various pieces of educational legislation by parents, students and school officials. Finally, it attempted to formulate a theory that addresses the consistencies and inconsistencies in the treatment of children in public schools, along with the reinforcement of that treatment by the United States court system, and offer implications and recommendations for practice and for further research.

School Socialization

Durkheim (1998) expresses his belief that throughout the evolution of the American public educational system, schools have found themselves burdened with the duty of the socialization of the children in their care. Although schools only interact with students for a few hours each day, they are expected to mold those students according to the social norms of the outside world. They are supposed to distribute academic information, promote civic awareness, teach cultural norms, and make sure that all students take a certain role in the social system within the school itself. They are to make sure that all students grow up to be productive, active citizens, knowing right from wrong, and capable of improving their social standing in life (Shipman, 1975).

Equal Opportunity

In order to succeed, Degler (1984) believes that schools must ensure that there is equal opportunity to education. Equal opportunity to education is thought to equate to equal opportunity in life. Therefore, the feeling is that to deny a child equal opportunity to education is to deny that child an equal opportunity for success in adult life.

Under the Fourteenth Amendment to the Constitution, once a state government provides a system for education, it must provide it equally to all people in the state. Assuring this equal access to public education is a constantly evolving system of checks and balances. "Courts are limited to rendering opinions about the specific facts in the cases before them," (Rothstein, 1990, p. 3). There is "a hesitancy on the part of courts to add new meaning of constitutional rights and freedoms while expending increased energy on the interpretation of the extensive array of federal statutes that affect education policy"

(Alexander & Alexander, 2006 p. xxxvii). To deny the opportunity of education can result in a violation of certain rights under Titles V and XIX of the Social Security Act. In addition, it can amount to educational discrimination if not closely monitored (Spring, 2005).

Tinker v. Des Moines School District

The 1969 Supreme Court case of *Tinker v. Des Moines School District* served to provide case law for future disputes regarding First Amendment rights in schools. In *Tinker*, students were suspended for wearing black arm bands to school as part of a protest against the Vietnam War. There were no demonstrations and no disruption of school functions. The district court ruled that the school was acting within its rights to suspend the students based upon a fear that a disturbance would result from the students' actions. The Supreme Court disagreed with the district court, pointing out in its decision that

...in our system, undifferentiated fear or apprehension of disturbances is not enough to overcome the right to freedom of expression. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

Socialization Within School

Recent studies examining the patterns of interaction between members of the school community show how teachers and students both “come with preconceived notions and definitions with which they mutually construct the reality of their life in

school” (Bennett deMarrais & LeCompte, 1998, p.189). These beliefs and definitions serve to form the social framework for the school community.

Another study promotes using schools to increase “empowerment of subordinated and marginalized groups within society” (McLaren, 2002), such as those usually discriminated against in social and political settings. These might include the poor, minorities, and females. This empowerment is also a method of socialization.

Shipman (1975) characterizes socialization by the process of encouraging its members to play roles defined within the culture. Socialization in a school consists of: (1) concise definitions of appropriate behavior; (2) rewards for engaging in appropriate behavior; (3) punishments to extinguish inappropriate behavior; and (4) maximum exposure to the new culture. All participants within the school’s society must have a role to play and be encouraged to play that assigned role.

The job of defining and assigning the respective roles and implementing the process of socialization into the school setting falls to the faculty and staff. They must develop a social system within the school that serves as an example of what a model life should be. In addition, they must form the guidelines for designating certain roles to certain participants within the school’s social system, and for monitoring and cultivating those relationships. These guidelines form the actual social structure or organizational culture within the school. It is the implementation of these guidelines that fulfills the requirements of the structural-functional theory of schooling in which schooling “serves to reinforce the existing social and political order” (Bennett deMarrais & LeCompte, 1998, p. 7). July, 1998, believes that “it is the social process and the social climate which

facilitates the ‘process of education’” (p.27). Coleman and Hoffer (1987) stated that schools were:

...an instrument that alienated the child from the family, an instrument that benefited the child by bringing it into the mainstream of American society, but at a cost to the continuity and strength of the family. The cost was not great when a school served [an ethnically and religiously homogenous] local community, for then the culture of the local community pervaded the school and made it consistent with the functional community of adults whose children it served. The cost was great, however, for cultural minorities in [heterogeneous communities] (p.140).

Socialization within schools has historically been difficult due to the diverse populations of students within their walls. The student population in a particular school consists of children of varying abilities, races, languages and ethnicities, genders, ages, socioeconomic statuses, and disabilities. Based upon the Fourteenth Amendment to the Constitution, education should be available for all, despite their differences. Education has long been considered a property right in the eyes of the law, as evidenced by the courts’ interpretation of the Constitution in past decisions. This interpretation has provided precedents for those advocating for equity in education.

Racial Discrimination

Promoting equity in education, or equality of opportunities to education, has required struggling toward protection of civil rights and the end of educational discrimination. Perhaps one of the most prominent cases of educational discrimination to find itself before the courts was *Brown v. Board of Education (Kan.)*, (1954). This was the first time the Supreme Court had used sociological data as the basis for a decision (Bennett deMarrais & LeCompte, 1998). Parents of an African-American elementary

schoolgirl, Linda Brown, filed suit against the district school board, challenging the requirement that their daughter attend an African-American school that was inferior to local white schools and located farther from her home. This particular case progressed all the way to the U.S. Supreme Court for a final ruling. The court ruled, without dissent, “segregation in and of itself causes inferiority and is thus a denial of due process and equal protection.” In addition, the court ruled that segregation of students, based solely on race, was a violation of their Fourteenth Amendment rights and thus was unconstitutional. *San Antonio v. Rodriguez*, (1973) and *Goss v. Lopez*, (1975) emphasize that students do have a property interest in education, even though education is not a Constitutional right.

Chief Justice Warren, in writing his opinion, purported that emphasis should be focused on the overall effect of segregation itself on public education. He asked, “Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other ‘tangible’ factors may be equal, deprive the children of the minority group of equal educational opportunities?” His answer was, “We believe that it does” (Berube, 1994, p. 56). In *Litigating Intelligence; IQ Tests, Special Education, and Social Science in the Courtroom* (1987), Elliott states, “the faith in education as the vehicle to success and good citizenship was shown to be the almost sacred belief it is when it got the ... constitutional approval in *Brown v. Board of Education* in 1954”(p. 3).

The Civil Rights Act of 1964 allowed the government to pressure school systems to reduce segregation by threatening to withhold federal education funds or to threaten

action through the courts. Unfortunately, since education has always been a responsibility of the individual states, application and enforcement varied from state to state.

Minority Statistics

Chief Justice Warren's viewpoint is strengthened even today, with emphasis being placed on the "separate but equal" philosophy of educational equality. National statistics show that minority students are currently more often suspended from schools at a ratio of 3:1, tracked into low-ability groups, and have been found more likely to not finish school with a high school diploma. Minority students account for twenty-five percent of the student population but account for forty percent of all students suspended or expelled from school (Underwood & Mead, 1995). In one particular school, African-American students were found to be suspended for violating the same offenses for which white students only received a reprimand, thus resulting in unequal treatment within the school (Spring, 2005).

Discriminatory practices find their ways into student testing and ability grouping areas as well. Biases based on race, culture, socioeconomic status, language, and gender all find their ways into many classification and testing practices. Two-thirds, or 68.5% of secondary school students with disabilities are male (Elliott, 1987). There has been a tendency to classify a concentration of minority students in less advanced school programs according to Underwood & Mead, 1995. This is contrary to sociological research that has found educational aspirations to be higher in African-Americans than in whites within the same social class (Spring, 2005). Elliott, 1987, feels "there is evidence

that black students who enter white-dominated school districts get placed into special education classes at rates far higher than those in segregated settings” (p.81).

Socioeconomic Discrimination

Social class has been a longstanding barrier for children of poverty. They have long been resigned to accept what the system gives them. They are accustomed to the least qualified teachers, the fewest choices, the most rigid policies, and the worst quality in facilities. “Those parents who yearn for something better for their children lack the power to make it happen. They lack the power to shape their own lives and those of their children” (Bennett, et al, 2001, p. 173).

The Elementary and Secondary Education Act (ESEA) was passed in 1965 at an initial cost of approximately \$1 billion to offer additional programs to elementary school children from poor and minority families. The idea was that “early intervention would compensate for the disadvantages resulting from ... family background” (Bennett deMarrais & LeCompte, 1998, p. 235). Under ESEA, Title I became the most important program, providing for the Head Start program that is still popular throughout communities today. Funding for Title I programs was tied to the implementation of desegregation requirements as set forth by the Civil Rights Act, with the hope that it would force states to comply with those requirements.

In association with the discriminatory practices against children of poverty, state residency laws attempted to bar homeless children from attending public schools. The McKinney Homeless Assistance Act came into being in 1987 and insures that homeless children have access to a free and appropriate public education (FAPE) on an equal basis

with non-homeless children. In addition, school districts must provide special education services, compensatory education, and transportation for these homeless students.

Discrimination Based on Language and Ethnicity

In 1974, Title VI, which addressed discrimination based on language and ethnicity was again brought before the courts, along with the Equal Opportunity Act of 1974, in *Lau v. Nichols*. In this class action case against the San Francisco Unified School District on behalf of non English-speaking Chinese students, the court ruled that it does not constitute equality of treatment where the students do not understand English but are instructed solely in English. The Supreme Court ruled: “It seems obvious that the Chinese-speaking minority receives fewer benefits than the English-speaking majority from respondents’ school system which denies them a meaningful opportunity to participate in the educational program—all earmarks of the discrimination banned by the regulations” (Spring, 2005, p. 260). In addition, states cannot deny interpretation and bilingual instruction to students who do not use the English language. In 1978, more issues such as these were addressed with the passing of the Bi-lingual Education Act.

For those students who are bi-lingual, and who might be entitled to special education services as well, the burden falls upon the students and/or their advocates via the Equal Education Opportunities Act (EEOA), to show the association between their language barriers and their learning difficulties. The students must be able to identify their language barriers and show how their language barrier impedes their participation in the instructional program. Next, they must show how the defendants have failed to take appropriate action to overcome those language barriers, and finally, they must identify

the connection between the school system's failure and the student's learning problems (Underwood & Mead, 1995).

Gender Bias

Gender bias, one of the most subtle forms of educational bias, finds its way into programs and activities such as athletics, scholarships, advanced placement courses, and classroom curriculum materials. Often called sex-role stereotyping, materials in the classrooms have been found to relegate females into traditional female roles and activities. "For instance, math problems involving girls often show them jumping rope, buying clothes, sewing, cooking, or calculating the grocery bills" (Ballantine, 2003, p. 113). Many textbooks fail to contain references to women in historical roles. Levine and Levine (1995) report strong patterns of sexual discrimination in math and science, as well as vocational programs.

Until recently, male athletic programs have enjoyed more funding and attention in schools than those for female students. The enforcement of Title IX has been directly responsible for the significant increase in opportunities for females in the area of sports. Textbook editors have initiated changes in sex-role typing in curriculum materials, and female students are finding their ways into more and more advanced placement classes.

Discrimination Based on Disability

Discrimination based on disability is not a new concept. Even as far back as the time of primitive man, individuals with exceptionalities were regarded as being cursed by the gods. It was in ancient Greece that the term "idiot" was first used to define a person

with any type of deviance. It was not uncommon for infants with exceptionalities to be abandoned on a hillside to die so as to relieve society of the burden of caring for them.

In Rome, those with exceptionalities, or deviants, were allowed to serve as entertainment for the powerful and the wealthy. In China, Confucius termed those individuals with exceptionalities as “weak minded.” He also believed that these deviants had a sort of claim on society and felt that, since these individuals were unable to care for themselves, society should assume that responsibility (L’Abate & Curtis, 1975).

With the coming of Christianity, care for many of these individuals was administered through the monasteries. During the Middle Ages some individuals with exceptionalities served as fools and jesters in the royal courts while others were thought to be possessed by the devil. It wasn’t until the twelfth century that the kings of England determined that the care and treatment of these individuals was a responsibility of the court. Many served in the court as entertainers while many others roamed the countryside. Because of the protection offered to them by the court, they were given the right to beg (Blackhurst & Berdine, 1981).

Exorcism, demonology, and persecution of the “handicapped”, or those persons with mental or physical disabilities, were common during the Renaissance and the Reformation era. Many individuals with disabilities were thrown into dungeons where they lived out their short lives. Those who escaped the dungeons, lived their lives roaming the countryside (L’Abate & Curtis, 1975).

In colonial America, people with mental disorders were treated as violent criminals. Those who were not violent became beggars. Blackhurst and Berdine (1981)

report that those who suffered from mental disabilities were usually (1) kept at home with partial public support, (2) put in poorhouses, or (3) auctioned off to the bidder who would support them at the lowest cost to the community, in return for whatever work the bidder could get from them. It was to be another hundred years before things were to improve significantly for those individuals with disabilities.

By 1823, the State of Kentucky had established the first state school for the deaf. The late 1800's saw more interest in providing specialized schools for the deaf and the blind, but public school remained out of the question for most children with disabilities. Just before the end of the nineteenth century both Rhode Island and Chicago established classes for children with mental and physical disabilities. In 1911, New Jersey adopted the first special education mandates in state law. Minnesota established special education certification requirements in 1915.

Ballard, Ramirez, and Weintraub (1982) report on studies by the U.S. Office of Education that indicate 12 percent of children with disabilities were being served by schools in 1948. That percentage rose to 21 percent in 1963 and 38 percent in 1968. Conversely, the studies show that 62 percent of children with disabilities were not being served by schools as late as 1968. Although there were some programs available for children with disabilities, these children were exempt from the compulsory attendance laws in many states for most of the twentieth century. Many states actually had compulsory attendance laws that effectively provided for the nonattendance of children with certain disabilities. Many children were "further excluded from receiving a publicly supported education when they could not meet specific behavioral or physical entrance

requirements” (Ballard, Ramirez, & Weintraub, 1982, p.12). This philosophy of exclusion continued into the 1970’s, only to be resolved with the passage of PL 94-142.

Passage of PL 94-142

The passage of the Education for All Handicapped Children Act in 1975, or PL 94-142 which it is commonly called, was the result of a need expressed by Congress:

- (1) there are more than eight million handicapped children in the United States today;
- (2) the special educational needs of such children are not being fully met; more than half of the handicapped children in the United States do not receive appropriate educational services which would enable them to have full equality of opportunity;
- (3) one million of the handicapped children in the United States are excluded entirely from the public school system and will not go through the educational process with their peers;
- (4) there are many handicapped children throughout the United States participating in regular school programs whose handicaps prevent them from having a successful educational experience because their handicaps are undetected (Education for All Handicapped Children Act, 20 U.S.C.A. §1400(b)).

In response to growing citizen pressure on behalf of children with disabilities, Public Law 94-142 was passed in 1975 and incorporated certain tenants. These included (1) a right to a free appropriate public education (FAPE), (2) an individualized education program (IEP), (3) exceptional student education (ESE) services, (4) related services, (5) due process procedures, and (6) the least restrictive environment (LRE) in which to learn. The enactment of this law has led to innumerable pieces of legislation that have addressed these issues in greater detail. “Congress does not define specifically what constitutes an ‘appropriate’ education, opting instead to delegate latitude to public schools to make this determination in accordance with the procedural process as enunciated in the law”(Alexander & Alexander, 2001, p. 448).

Case of Rowley (1982)

The first case brought before the Supreme Court following the passage of PL 94-142 was the *Board of Education of the Hendrick Hudson Central School District v. Rowley* in 1982. This was a case which brought to the forefront the question of what exactly constituted FAPE. Amy Rowley was a deaf child in Peekskill, New York whose parents had requested the services of a sign language interpreter for Amy in her classroom. The school district determined that Amy did not need the services of an interpreter and was progressing well in school with the use of an FM hearing aid, services of a speech therapist and her ability to read lips fluently. The parents were unhappy with the decision and initiated due process proceedings and filed suit in the United States District Court when the hearing officer upheld the school district's decision. The District Court ruled that Amy was not receiving FAPE without the aid of a sign language interpreter. The court ruled that a child with a disability must have "an opportunity to achieve his full potential commensurate with the opportunity provided to other children."

After a United States court of appeals sustained the decision, the school district asked for review by the United States Supreme Court. After hearing the case, the Supreme Court reversed the appellate court's decision. The Justices said:

...Certainly the language of the statute contains no requirement like the one imposed by the lower courts—that states maximize the potential of handicapped children "commensurate with the opportunity provided to other children."... That standard was expounded by the District Court without reference to the statutory definition or even to the legislative history of the Act (Alexander & Alexander, 2001, p. 455).

The Court ruled that the intention of the law “was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside” (p. 455).

Current Legislation

PL 94-142 and then the Individuals With Disabilities Education Act (IDEA) were amended by Congress in 1978, 1986, 1990, 1997 and 2004. The last four revisions contained the most significant changes (Boyle & Weishaar, 2001). The reauthorizations of IDEA in 1997 and 2004 served to expand the already complex pieces of legislation deluging local school systems with regard to rights of students with disabilities. Perhaps the most controversial aspect of the 1997 IDEA revision dealt with the specific discipline procedures added to protect the rights of students with disabilities. These aspects were addressed again in the 2004 reauthorization.

Individuals with Disabilities Education Improvement Act (IDEA) of 2004(PL 108-446)

When comparing IDEA of 2004 to IDEA of 1997 it is important to draw emphasis to the distinguishing characteristics of the “new” IDEA. Although much of the Act has remained intact, there are substantial differences in the areas of paperwork production, legal processes, and guidelines for schools when dealing with discipline issues of students with disabilities.

Under Part A, Sec. 601©(2)© Congress determined that “undiagnosed disabilities prevented the children from having a successful educational experience.” The terminology of “undiagnosed disabilities” has replaced the phrase “because their

disabilities were undetected,” thus shifting the emphasis from detection to that of diagnosis through evaluations.

In addition, subsections 8, 9, and 10 were added to Part A, Sec. 601© that directly address the issues of legal process and paperwork issues. Emphasis has been placed on expanding the opportunities for parents and schools to resolve their differences outside of a courtroom and relief for educators in the area of “irrelevant and unnecessary paperwork burdens that do not lead to improved educational outcomes.” More specifically, Part B, Sec. 614(d)(5)(A)(iii)(II)(aa) allows for the development of an optional multi-year IEP for students whose parents agree.

When addressing the purpose of IDEA, 2004, Congress added as its number one purpose “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education...” (IDEA, 2004, Part A, Sec. 601©(14)(d)(1)(A). This effort to ensure a “free appropriate public education” replaced the desire to “ensure that the rights of children with disabilities and parents of such children are protected” as the number one priority of IDEA.

In an apparent effort to restore a measure of authority to local schools Part B, Sec.615 (k)(1)(A) allows school officials to consider a change in placement on a case-by-case basis. Officials are to consider any unique circumstances “when determining whether to order a change in placement for a child with a disability who violates a code of student conduct.”

With the reauthorization of IDEA in November 2004 came a small victory for schools that find themselves with a student with a disability who exhibits dangerous behaviors while on the school campus. Prior to this current reauthorization, “any student could be removed from class for up to 10 days for dangerous conduct, but a student with a disability could then come back until a decision was made as to whether the conduct was caused by the disability. ‘In one case, two students, one disabled and one not, stabbed another student in class,’ (Patti) Ralabate, (a speech and language pathologist who heads up the National Education Association (NEA) special education efforts) recalls. ‘The non-disabled student was immediately expelled. The disabled student was sent back to class pending a determination of whether the disability had caused the behavior. The teacher and the other kids were frightened to death, but it took several days to get that student out of the class’ (White, C., February 2005).” Since the reauthorization, “an extremely violent student can be removed for up to 45 days while the IEP team figures out what to do next. ‘There’s only a small percentage of students who might cause physical harm in a class, but this change will definitely help teachers feel less helpless when dealing with them,’ says Mary Binegar, an NEA special ed cadre member who teaches in Ohio (White, C., February 2005).”

Zero Tolerance Legislation

In direct contrast to legislation governing student rights, strong legislation governing the rights of schools to operate in a safe environment has been enacted as well. This legislation, commonly known as “zero tolerance”, provides school systems with the authority to immediately remove any student who has committed a serious act of physical aggression, or who is in possession of a weapon or drugs on a school campus (Duval County Public Schools, 2000). Commission of zero tolerance offenses can result in an extended suspension, or expulsion, for the student involved.

In all instances of suspension or expulsion, however, due process must be provided in a timely manner to the student involved. The amount, and type, of due process differs, however, for students with disabilities and those without disabilities. Boyle and Weishaar (2001) state in *Special Education Law with Cases* that “Even

students not yet identified could assert the protections of IDEA in a disciplinary situation if the school district personnel had knowledge that the child might have a disability” (p.54).

Efforts to provide students with due process and continuing educational services (*Mills v. Board of Education of District of Columbia*, 1972) have resulted in an overabundance of court cases. In the Mills case, the court found that the District of Columbia was not furnishing more than 18,000 children with disabilities with a free and appropriate public education. Along with the court’s findings, it adopted a plan devised by the District of Columbia Board of Education to remedy the situation. The plan provided for a free and appropriate education for all children, an individualized education plan (IEP) for each student with a disability, and due process procedures. As a result of the Mills case, school districts were ordered to provide “adequate alternative educational services suited to the child’s needs, which may include special education or tuition grants.” In addition, it was ordered “defendants shall not exclude any child resident ... from such publicly supported education on the basis of a claim of insufficient resources.”

The decision in the class action suit on behalf of a group of students with mental disabilities, *Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth (PARC)*, 1972, reiterated that no longer could lack of adequate funding be used as a defense for exclusion of students with disabilities from individualized programs. As a result of this suit, Pennsylvania discarded a state law that relieved schools of the responsibility to enroll “uneducable” or untrainable” children (Hume, 1987).

In *PARC*, the court ruled that, in the state of Pennsylvania, children with disabilities were entitled to a free and appropriate public education. In addition, it ordered that they were to be educated in regular classrooms whenever possible, and were not to be segregated from the regular student population. The court stated that students with disabilities should receive a

free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class [i.e., a class for "handicapped" children] and placement in a special public school class is preferable to placement in any other type of program of education and training...

Whereas the *PARC* case represented students with mental disabilities, the *Mills* case expanded its representation to include those students with behavior problems, and emotional disabilities. These two federal cases served to lay the foundation for the passage of future federal legislation in this area (Alexander & Alexander, 2006).

In an effort to see that the appropriate legislation is adhered to in the public schools, while allowing schools to operate in a safe environment and one conducive to learning, it has fallen to the courts to determine the rather tenuous balance between individual student rights and those of the educational system. Courts are hearing more cases with regard to educational practices than ever before, many dealing with the complex legislation surrounding students with disabilities. With each piece of legislation comes the opportunity for various groups to seek assurance through the court system that their rights are being protected. This is reflected by Bolmeier, in *Legality of Student Disciplinary Practices* (1976); "Laws are not created in a vacuum; they reflect the social

and philosophical attitudes of society” (p. vii). Reflected in these attitudes is the right to equal opportunities to educational services.

Rights, Laws and Ethics

Balancing the rights of individuals, the laws passed to protect the rights of all citizens, and the ethics and morals that form the foundation of our country is an overwhelming task. Garrett believes that “...when we are considering the laws of the land or its moral norms, we shall have to engage in a ... balancing act, taking the greatest care we know how to see that they are consistent” (*Dialogues Concerning the Foundations of Ethics*, 1990, p.70). He feels that “In principal, every single person must be considered, every last soul” (p.71). “The public schools are obligated to provide an education to all the children who enroll, not only those whose conduct is above reproach. We are certain it is often difficult to determine when the right of a disruptive or disturbed child to receive a public education is outweighed by the possibility of danger to other students from that child’s presence in the classroom” states the court in *Denson v. Benjamin*, (1999).

Few would argue in defense of unequal opportunity in any aspect of life. The argument usually ensues over the meaning of equal educational opportunity. Most assume the belief that equal opportunity is desirable within the vision of a good society. The dilemma occurs in that most people disagree about what constitutes a good society, so it follows that there is disagreement about the meaning of equal educational opportunity as well (Jenks, 1988).

Albert defines equality "...as the impartial and equitable administration and application of the rules, whatever they are, which define a practice" (*Great Traditions in Ethics*, 1988, p. 369). However, one can never "...hope to comprehend everyone's situation, or how the laws or moral norms of the land will affect them..." (Garrett, 1990, p.71). There are situations in which inequalities are not only acceptable, but preferable.

Jenks (1988) proposes five different principles of equality in education. He attributes each of the five principles to a different tradition, resulting in different practical consequences.

(1) *Democratic equality*. Democratic equality requires [the teacher] to give everyone equal time and attention, regardless of how well they read, how hard they try, how deprived they have been in the past, what they want, or how much they or others will benefit.

(2) *Moralistic justice*. Moralistic justice requires [the teacher] to reward virtue and punish vice. In the classroom, virtue involves effort, and moralistic justice means rewarding those who make the most effort to learn whatever [the teacher] is trying to teach.

(3) *Weak humane justice*. Since some students have gotten less than their proportionate share of advantages in the past, humane justice requires [the teacher] to compensate those students by giving them more than their proportionate share of her attention while they are in her classroom. But the 'weak' variant of humane justice only requires [the teacher] to compensate those who have been shortchanged at home or in their earlier schooling, not those who have been shortchanged genetically.

(4) *Strong human justice*. This variant of humane justice requires [the teacher] to compensate those who have been shortchanged in *any* way in the past, including genetically. In practice, this means giving the most attention to the worst readers, regardless of the reasons for their illiteracy.

(5) *Utilitarianism*. Most utilitarians assume that the best way to get individuals to do what we want is to make every activity, including education, a race for unequal rewards. Equal opportunity means that such races must be open to all, run on a level field, and judged solely on the basis of performance. Thus, insofar as [the teacher's] attention is a prize, it should go to the best... (p. 519-520).

Equal opportunity can therefore imply either a meritocratic distribution of resources; a compensatory distribution of resources, or an equal distribution of resources. A meritocratic conception of equal opportunity can, in turn, favor either those who try hard or those who achieve a lot, while a compensatory conception of equal opportunity can favor either those who have suffered from some sort of disability in the past or those whose current achievement is below average (Jenks, 1988).

Regardless of which principle of equalization is utilized, the result of inequalities “[is] on the grounds that the disadvantages of those in one position are outweighed by the greater advantages of those in another position” (Albert, 1988, p. 371). Society appears to acknowledge inequalities if the “...justification of its inequality can never be determined in our society what one person is entitled to without balancing those claims against the claims of others (Rawls, 1971).

It is at this point that those writing legislation, those interpreting laws, and those applying them on a regular basis rely on their moral and ethical beliefs. “If we really wish to be moral in our dealings with different people... we must not insist upon the absolute letter of even basically just laws, for they are, at best, the crude and fallible instruments of mere men such as ourselves. It has been said that we must follow the spirit of the law...” (Garrett, 1990, p.71). Thus, the determination of what constitutes the “spirit of the law” rests with the courts.

The number of cases reaching the appellate court level has steadily increased in direct proportion to the amount of legislation passed regarding student rights. Many of the cases finding themselves before the courts represent issues regarding school

discipline and students with disabilities and their particular rights under IDEA and civil rights legislation. Based on the issues raised here, this chapter has been divided into sections that address questions of discipline, suspension and/or expulsion as change of placement, reauthorization of IDEA, due process, mandated procedures, final regulations, funding issues, and the formulation of a summary.

Question of Discipline

One issue that is currently posing serious questions is that of discipline. With the recent occurrences of school violence, more and more attention is being focused on student discipline and the prevention of further violent incidents in public schools. The public outcry is for a safe school environment and swift punishment for those who commit serious offenses.

Encompassed within the Individuals with Disabilities Education Act Amendments of 1997 and 2004, and reiterated in OSEP Memorandum 97-7 are four basic themes concerning discipline in schools:

- (1) All children, including children with disabilities, deserve safe, well-disciplined schools and orderly learning environments;
- (2) Teachers and school administrators should have the tools they need to assist them in preventing misconduct and discipline problems and to address these problems, if they arise;
- (3) There must be a balanced approach to the issue of discipline of children with disabilities that reflects the need for orderly and safe schools and the need to protect the right of children with disabilities to a free appropriate public education (FAPE); and
- (4) Appropriately developed IEPs with well developed behavior intervention strategies decrease school discipline problems.

The inclusion of students with disabilities into regular education classrooms has underscored the need for guidelines governing the disciplining of these students.

Discipline might include suspensions, expulsions, or reassignment of students for infractions of school rules, criminal laws, and/or zero tolerance offenses. Recent court decisions indicate that school officials must rely more heavily on special education professionals to deal with students with disabilities who misbehave. Schools are required to deal with, and accommodate, disruptive and dangerous students who pose a threat to other students and staff rather than exclude them from educational opportunities provided on the school campus. Educators are mandated, by law, to plan and implement successful behavioral programs appropriate to meet the needs of students with disabilities who are prone to having disciplining problems (Bartlett, 1989). These restrictions are not, however, applicable to those students without disabilities exhibiting the same negative, disruptive, and/or dangerous behaviors.

Two provisions of the Individuals with Disabilities Act (IDEA, 1997, 2004) must be considered when disciplinary action is taken with a student with a disability: appropriate education and least restrictive environment. PL. 94-142 mandates that a student must be provided the right to a free and appropriate education (FAPE) in the least restrictive environment. Acceptable environments for the placement of a student with a disability range from least restrictive (a regular classroom) to highly restrictive (an institution). Common designations might be a regular classroom, resource classroom, separate classroom, separate school or setting, or hospital/home instruction (Charlotte County Public Schools, 2002). However, each environment can be termed “least restrictive” depending upon the seriousness of a particular disability, and the student’s ability to cope within a specific environment.

Although students with disabilities are eligible to receive educational services across school settings, those students without disabilities are not permitted to participate in the same learning environments afforded to the those students with disabilities. Restrictions are placed on eligibility requirements for students to receive additional, specialized services and/or accommodations through exceptional student education programs. A complex and often lengthy screening process is required for all students requesting ESE services.

The reauthorization of IDEA (1997, 2004) extends the legal protection of students with disabilities to those who are “not yet eligible” for ESE services. This provision provides the same protection with regard to discipline issues as is provided to students already identified as having a disability. If the school is deemed to have knowledge that the student might possibly have a disability, the same discipline procedures must be followed as for already identified students with disabilities. IDEA states that a school is deemed to have knowledge if:

1. The parent of the child expressed concern in writing to personnel of the appropriate educational agency that the child is in need of special education and related services;
2. The behavior or performance of the child demonstrates the needs for such services;
3. The parent of the child has requested an evaluation of the child; or
4. The teacher of the child, or other personnel of the local education agency has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency (6125 (k)(8)(B)(i) through (iv)).

“These provisions appear to grant special education protections to regular education students whose parents are savvy enough to trigger the protections of the Act

by a verbal or a written request for evaluation, regardless of the outcome of that evaluation” (Maloney, 1998, p. 8-1). Kelman & Lester (1998) see these provisions as “...legal entitlements designed to respond to the claims of people with disabilities” (p.117).

Suspension and/or Expulsion as Change of Placement

The history of discipline procedures for children with disabilities has evolved sporadically over time, depending on the amount of public insistence at any given moment. Courts have consistently ruled (*Stuart v. Nappi*, 1978 and *Doe v. Koger*, 1979) that students with disabilities must be given special consideration in disciplinary proceedings. Disciplinary proceedings might result in consequences such as suspensions or expulsions from school for a determinate period of time.

The court concluded in *Stuart v. Nappi* (1978), that expelling children who have disabilities is a change of placement and is inherently “inconsistent” with the statutory and regulatory procedures established for changing the placement of disruptive students with disabilities. Earlier court decisions prohibited expulsion, noting that, under Public Law 94-142, services must be provided through alternative placement in one of the other educational environments offered. Those students without disabilities may be expelled however and, although it is desirable to find an alternate placement for such students, it is not required by law.

In 1981, expulsion again surfaced as an issue when nine students with mental disabilities in the state of Florida sued local districts and the state, claiming that they had been denied an appropriate education due to expulsion. The court upheld expulsion in *S-i*

v. Turlington, (1981) as a viable form of discipline to be used with students with disabilities. The court, however, pointed out that cessation of all educational programs violated the rights of students with disabilities; consequently even after expelling a student, services must be provided.

In *Honig v. Doe* (1988), the U.S. Supreme Court resolved the issue by making it clear that the law (1) confers a substantive right to education on students with disabilities, (2) prohibits school officials from unilaterally excluding a student with a disability from the classroom for dangerous or disruptive conduct for an indeterminate period of time *where conduct grows out of a disability*, and (3) permits school officials to temporarily suspend a student for up to ten days to protect the safety of others and to provide a “cooling down.” If the school district needs more than ten days to develop a new, more appropriate, individual education plan (IEP) with a more restrictive environment, or the parents do not agree with the new placement, then the school district may request that the courts issue an injunction to either keep the child out of school or temporarily place the child in another environment until an appropriate placement may be determined.

Even though a “stay put” provision included in IDEA (1997, 2004) requires that the child with a disability remain in school if the parent does not agree with the proposed change of placement, it does not forbid the use of reasonable measures to control a child who endangers himself or others. The school may employ methods such as study carrels, time-outs, detention or other restriction of privileges in the interest of the safety of the school, its faculty, staff, and students. Such measures do not constitute a change of placement.

Following the Honig case, a school district was successful in obtaining an injunction allowing for removal of a student for safety reasons. In *Texas City Independent School District v. Jorstad* (1990), the school district recommended limiting the student's participation to a class emphasizing behavioral management or home instruction because the child was a danger to himself and other students. The parents disagreed with this new placement. The child's behaviors included hitting other students and staff, ripping off wooden door jambs, ripping up carpet, threatening to jump out a second floor window, and so on. When the parent refused placement in a behavioral class or home instruction, the school sought and received an injunction from the court. The court said the child was "an ongoing major threat to others, as well as to himself."

In contrast to the Jorstad case, an attempt to file a juvenile court petition against a student diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in Tennessee failed (*Knox County Schools v. Chris L.*, 1997). The student entered an unauthorized bathroom with another student and proceeded to vandalize a water pipe, resulting in approximately \$1000 worth of damage. A meeting determined that, although Chris' vandalizing the water pipe might be a manifestation of his ADHD, his unauthorized entrance into the bathroom was not. On this basis, a juvenile petition, or legal charges, were filed against Chris. A juvenile petition was filed against the other student as well.

The Court of Appeals for the Sixth Circuit ruled, "When school systems fail to accommodate a disabled student's behavioral problems, these problems may be attributed to the school system's failure to comply with the requirements of the IDEA." The request for a juvenile court petition against Chris was denied based upon the court's

determination that the filing of a juvenile petition is a change in educational placement entitling the child to the protections of the IDEA.

Reauthorizations of IDEA

With the reauthorization of IDEA in 1997 and again in 2004, came more stringent reporting guidelines and a clearer understanding of the procedures schools were to utilize when disciplining a student with a disability. 300.522 states that

To the extent removal would be applied to children without disabilities, a school may change a handicapped child's current placement for not more than 10 consecutive school days, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as they do not constitute a change of placement.

School personnel must also make clear that, after a child has been removed from his or her current placement for more than 10 school days in the same school year; during any subsequent days of removal the school must provide educational services without interruption.

Maloney (1998) explains that school districts can unilaterally place a student with a disability in an interim alternative educational setting for up to 45 days, without parental agreement, if the student commits weapons or drug offenses (zero tolerance offenses), or if a hearing officer determines that the student is likely to cause injury to himself or others if he remains in his current placement. Some parent advocates are interpreting the law to make distinctions between "carrying" a weapon to school and "coming into possession" of a weapon after arriving at school. They insist that a 45-day change in placement is only permitted in cases where the student actually "carries" a weapon onto school grounds. If the student "comes into possession" of a weapon after

arriving at school they feel a change in placement should not be permitted. Parent advocates also take issue with the terminology used with regard to a 45-day placement for “knowingly” being in possession of, selling, or using illegal drugs. The problematic term here is “knowingly.”

It is rare that a student readily admits responsibility for selling, using, or possessing illegal drugs. More often, the student denies having any knowledge of the existence of drugs on his/her person or in belongings. The inclusion of the term ‘knowingly’...will likely encourage legal challenges to attempts to remove students with disabilities who are engaging in illegal drug use (Maloney, 1998, p. 8-10).

In addition, IDEA (1997, 2004) makes it clear that “handicapped children may not be expelled or excluded from school for any misbehavior that is a manifestation of their disabilities.” It stresses that under no circumstances may students with disabilities be subjected to a total cessation of educational services, even for misbehavior that is not disability-related.

To better monitor a state’s compliance to these guidelines, IDEA requires that “the State educational agency examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities...compared to such rates for non-disabled children within such agencies.”

Due Process

When suspending a student with a disability for 10 days or more or considering expulsion proceedings, IDEA (1997, 2004) mandates that certain procedures must be followed. The parents of a child being considered for suspension or expulsion must be notified in writing. The notice must be specific and detailed, exceeding the notice elements generally required by common practice and constitutional procedural due

process. The notice must advise the parents of their rights under the law and provide a timeline for such procedures.

Fischer, et al. (2002) state that constitutional procedural due process requires, in most cases, that the student be given notice of the charges, either oral or written, and an opportunity to present his/her side of the story. With regard to students without disabilities, schools may act without due process in minor matters, or emergencies. Emergencies must be followed by due process as soon as possible. Disciplinary matters that may lead to short-term suspensions of one to ten days or to entry on the students' record require some measurement of due process. Extensive, careful due process is required in instances where disciplinary matters may result in long-term suspension or expulsion, or in a serious penalty such as a short suspension during final exams.

The Office for Civil Rights (OCR) has determined that school bus suspensions should be included in the 10-day suspension limitation if the student does not attend school as a result of the bus suspension. Placement in an in-school suspension program may also be included in the 10-day suspension limitation if the student's IEP program and services are not being maintained during this period (*Fairfield (TX) Ind. Sch. Dist.*, OCR 1987; *Big Beaver Falls Area Sch. Dist. v. Jackson*, 1993).

A court case involving two students with disabilities who filed suit against the California Superintendent of Public Instruction (State Superintendent) and the San Francisco Unified School District (SFUSD), *John Doe and Jack Smith v. William Maher and Wilson Riles*, (1985), debated the issue of due process under IDEA. Both students had a propensity for aggressive behavior and were classified as "emotionally

handicapped” under legislative guidelines. Following several incidents of misconduct on Smith’s part, an IEP team was convened and it was decided to reduce his program to a half-day. His grandparents agreed to the reduction.

After subsequent incidents of sexual harassment toward female students, Smith was suspended for 5 days and referred for expulsion. Smith filed suit, objecting to an extended suspension imposed pending the expulsion hearing and the reduction of his program to half-day status. Ultimately, the court found in favor of the students, stating that school officials appeared to never have apprised Smith’s grandparents of their right to challenge the reduction of the program to a half-day. Due process under IDEA specifically dictates that school officials seeking to expel a student with a disability must follow the procedures prescribed in the Act and its accompanying regulations for changing the student’s placement.

In addition, it was ruled by the Court of Appeals for the Ninth Circuit in *Doe v. Maher* (1986), “disruptive behavior is not a monopoly of the emotionally disturbed. For these children, however, such behavior may be the direct result of the handicap - and thus may be no different in principle from the physical incapacities of an orthopedically impaired child or the cognitive difficulties of a dyslexic student.” Therefore, any behavioral difficulties these students might encounter would be considered a manifestation of their disability and therefore not punishable by expulsion.

Mandated Procedures

A meeting called a Manifestation Determination, consisting of the staffing committee, including parents and educators, must be held to determine whether the

special education student's misconduct is related to the disability and whether the current educational placement is appropriate. A school psychologist, ESE specialist, and a school administrator are included in the manifestation hearing. The decision of whether the behavior is, or is not, believed to be a result of the disability is determined by this committee. Based upon the determination of this team, the disciplinary process may continue with suspension or expulsion proceedings, or may be reevaluated or terminated at this time (IDEA, 1997, 2004). If the student's actions are determined to be a manifestation of the student's disability, the student must be immediately returned to his previous placement.

Because expulsion constitutes a "significant" change in placement, an evaluation of the student's educational needs must be assimilated. The parents must be informed of their right under law to demand an impartial administrative hearing and subsequent judicial review of an adverse hearing decision. It is important to note that the parents may not take the issue before a court until they have exhausted all options under the due process procedures.

Finally, and perhaps most important, unless the parents and school officials agree otherwise, the student must be allowed to remain in the present educational placement pending administrative and judicial review (IDEA, 1997, 2004). This requirement is often referred to as the "stay-put" provision and is perhaps the most effective weapon wielded by parents of students with disabilities. Basically, no matter what the student's placement might be at the time of the offense, the student may remain in that setting until the hearing decision, or until parents and school officials can agree on an alternative

placement. There is, however, no “stay-put” provision for those students without disabilities who violate school policy.

In conclusion, IDEA (1997, 2004) mandates that specific procedures be followed when determining a change in the placement for a student with a disability. These procedures include (1) notifying the parents in writing of the school’s intention to seek expulsion; (2) convening an IEP team meeting to determine the reason for the negative behavior and the appropriateness of the child’s current educational placement; (3) conducting an independent evaluation of the student’s educational needs; (4) informing the parents of their right to demand both “impartial administrative review” of any IEP team decisions and judicial review of the state’s final administrative determination; and (5) allowing the child to remain in his then current educational placement pending the decision of any administrative review (unless the parents agree to the placement). IDEA (1997) further states, “Because the expulsion procedures for regular education students do not impose these special requirements, they are inapplicable to handicapped children.”

Final Regulations

The final regulations define change of placement by adding patterns-of-exclusion language. A change of placement is considered when districts subject students to a series of removals that constitute a pattern, as well as when the removal is for more than 10 consecutive school days. In addition, IEP teams do not have to conduct manifestation determinations prior to suspending a student with a disability for 10 school days or less, or for a total of more than 10 school days in a school year, provided the series of suspensions does not amount to a pattern of removals. Most school districts hold

manifestation determination meetings in a timely manner so as to avoid any possible litigation regarding issues of possible non-compliance.

During any long-term removal for behavior that is not a manifestation of a disability, schools must provide services as deemed necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals of his or her IEP. These services might consist of placement of the student in an alternative educational setting or the providing of home instruction.

In addition, the amendments added provisions requiring schools to assess children's negative behavior through development of a Functional Behavior Assessment (FBA), and to develop positive behavioral interventions to address that behavior through a Behavior Intervention Plan (BIP). The Functional Behavioral Assessment must be performed when a student has been (1) suspended for the first time in a school year for more than 10 school days; (2) received a pattern of short-term suspensions totaling more than 10 school days in a school year; or (3) placed in an interim alternative educational setting for not more than 45 days for misconduct that involves weapons or drugs. The FBA must be done no later than 10 business days after first removing the child for more than 10 days in a school year. In other subsequent removals for a student who already has had an FBA and a Behavior Intervention Plan, the IEP team members can review the Behavioral Intervention Plan, or BIP, and its implementation without a meeting, but must convene if one or more of the team members believe that the BIP, or its implementation, needs modifications. FBAs and BIPs are not required for students without disabilities.

Funding Issues

Providing adequate staff and facilities necessary to abide by Congress's regulations is costly. IDEA was enacted in response to Congress's concern that many children with disabilities were being denied a meaningful public education simply because states lacked the funds and the initiative to cope with the special problems involved in teaching those children. Tied to the IDEA legislation are federal funds available to all states that are willing to abide by the regulations contained within the legislation.

Congress requires all states receiving this federal educational funding to educate all children with disabilities, regardless of the severity of their disabilities, and included within the definition of "handicapped" or "disabled" are those children with serious emotional disturbances. States must provide a plan, demonstrating how it will "locate, identify, and evaluate" all students within its region who are in need of special education services (IDEA, 1997, 2004). In addition, it must show proof of continuing educational services for all students with disabilities who are expelled from school for commission of offenses that are not a result of the disability. Failure to provide these services will result in a withholding of the state's federal funds allocated under IDEA, Part B. These funds can be withheld until the state agrees to amend its disciplinary policies (*Commonwealth of Virginia Department of Education v. Richard W. Riley, United States Secretary of Education: United States Department of Education, 1996*).

"While the legislation claims no federal control over local education, in reality local school administrators and boards give up part of their local autonomy as they are

forced to comply with federal standards in order to receive funds” (Spring, 2004, p 184). Stein, in *The Culture of Education Policy*, 2004, believes that “[I]n the case of compensatory education policies, teachers and administrators who avoid the use of reductive labors to organize service provision and resource allocation, who think holistically about children’s educational assets and needs, and who individualize educational programs to build on students’ assets often find themselves out of compliance with policy mandates”(p.xiii).

Summary

Bartlett (1989) feels that, although legislation appears to attempt to tie the hands of school administrators, its purpose is to provide concise guidelines that will enable them to make informed and appropriate decisions with regard to students with disabilities. It is essential that actions take by school administration make clear that the services and modifications used to address the student’s behavior work to prevent the behavior from recurring. In essence, school officials have been advised not to consider expulsion a viable solution to a student’s discipline problem. Instead of excluding the disruptive, and sometimes dangerous, student with disabilities, schools are faced with finding or creating an educational program that meets both the needs of the individual student and the school community as a whole (Bartlett, 1989).

Although legislation has progressed far in the protection of educational rights for students with disabilities, legislation addressing the same issues for those students without disabilities has been found to be less prevalent. Elliott (1987), insists “... little attention is paid to the question of whether mainstreaming, particularly mainstreaming

behavior-disordered children, has impaired non-disabled students' academic performance" (p.59).

A great number of cases brought before the courts recently have found in favor of students with disabilities and against those students without disabilities. Of those brought before the courts on behalf of students without disabilities seeking relief from suspensions or expulsions, the courts have found in favor of the school districts in several cases (*Anders v. Fort Wayne Community Schools*, 2000, *Doe v. Pulaski County Special School District*, 2002, *S. Remer v. Burlington Area School District, et. al.*, 2001, and *M.G. v. Independent School District Number 11 of Tulsa county Oklahoma*, 2000).

This study examined the effects of recent federal and state education legislation upon the equality of services afforded to students with disabilities and their non-disabled peers. It looked to Supreme and appellate court cases that are asked to address issues concerning disciplinary procedures and it sought to provide a comparison of the rulings. This study afforded an overall historical perspective of this legislation, beginning with PL 94-142. An attempt was made to determine the ethical and legal implications found, as in its effort to provide equality in public education, federal and state legislation has instead afforded students with disabilities preferential treatment when dealing with disciplinary issues.

Chapter Three

Method

Problem

Such interventions, along with the enactment of laws meant to equalize the opportunities of various populations, perpetuate differential treatment throughout American society. There are questions as to the nature and scope of these differences and to how this differential treatment affects the operation of our public schools. This differential treatment results in an inequity in education between those students with disabilities and those without. This essential inequity, state Kelman and Lester in *Jumping the Queue* (1998, p. 16), is ...”flowing from their right to be spared the consequences of prejudice against their disability.” They define this special treatment as “substantial discipline immunity” (p. 195).

Appellate courts have ruled that serious violations of school rules by students without disabilities may result in a denial of public education through suspensions and/or expulsions while the same violations by students with disabilities must result in no cessation of educational services. This educational inequity with regard to the disciplining of students with disabilities, and their access to public education, has demonstrated itself through legal court rulings and given rise to possible legal and ethical issues.

The Individuals with Disabilities Education Act (IDEA, 1997, 2004) ensures all students with disabilities a Free and Appropriate Public Education (FAPE) regardless of their misbehaviors in school. Osborne and Russo, 2003 state, “to protect their rights to a free appropriate public education, however, and to ensure that those with behavioral disorders are not excluded from the educational process because of the very disabilities the IDEA sought to address, special procedures must be followed beyond those that are implemented for most students.”

These procedures are an attempt to adhere to government mandates while continuing to maintain a safe and orderly school environment. In addition, these procedures result in a set of different standards for various subpopulations of students in our public schools. The ramifications of employing these differing standards have not been well studied. A question remains as to the existence and extent of legal and/or ethical implications resulting from the inequities within the system.

Purpose

The purpose of this study was to investigate the legal standing of differential disciplinary treatment of special education and non-special education students in K-12 public schools. The focus of this study was on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems. An emphasis was placed on any preferential treatment afforded to students with disabilities through the implementation and interpretation of educational legislation. With school discipline as a major concern in today’s school systems, the study’s focus was in this area.

This study delved into the myriad of complex legislation passed before and after the inception of Public Law 94-142 in 1975. It studied the relationships between the school discipline of children who receive special education services and those who do not. It searched the consistencies and inconsistencies in the treatment of these populations of students in school settings. It identified court cases dealing with school discipline and it provided a comparison of the rulings. It utilized interviews of outstanding authorities in the areas of law and education (e.g. school administrators, Department of Education specialists, and university professors specializing in the areas of educational law and finance) and developed and utilized surveys to discern understanding of various pieces of educational legislation by parents, students, and school officials. Research questions and survey items were developed in collaboration with members of this doctoral committee.

Finally, it attempted to formulate a theory that addresses the consistencies and inconsistencies in the treatment of children in public schools, along with the reinforcement of that treatment by the United States court system, and offers implications and recommendations for practice and for further research. Using the historical method of research, it afforded an overall historical perspective on legislation for students with disabilities, beginning with PL 94-142.

Research Questions

The following research questions were derived from both the problem and the purpose of this study. Consultations with members of my doctoral committee resulted in the approved research questions used. Given the focus of this study on the interpretation and application of federal and state education legislation by the courts and how the

various judicial decisions affect the discipline practices in public school systems, these questions were determined to be appropriate. An emphasis was placed on any preferential treatment afforded to students with disabilities, through the implementation and interpretation of educational legislation. With school discipline as a major concern in today's school systems, the research questions focus on these areas.

1. What is the standing of legislation regarding the differential discipline of students with disabilities as compared with the non-disabled students?

2. What is the standing of the courts' decisions regarding the differential discipline of students with disabilities as compared with the non-disabled students?

3. What are the consistencies and inconsistencies in the treatment of students with disabilities as compared with non-disabled students?

4. Do legislation and court decisions appear to foster differential treatment of certain populations of students in school?

5. To what degree do legislation and court decisions appear to impact differential treatment of students in school settings?

6. How does the law impact the behavior and discipline of students with disabilities?

7. Is there a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues?

Purpose of Research

Hillway believes that research provides the framework for progress in today's world. He states in, *Introduction to Research (1956)*,

...what we now accept as a necessary and even routine part of modern civilized life - the techniques of research and the benefits resulting from them - could never have been dreamed of by our primitive forebears, though even they must have had within them that vital spark of imagination, that speculative power which has grown into the marvelous tool of learning we call research (p. 36-37).

The purpose of all methods of research is to discover facts, concepts, generalizations, and ideas not previously known or recognized (Hillway, 1956).

Methods of knowing

Drew, 1976, cites four different methods of knowing, or fixing belief. These include tenacity, authority, *a priori*, and science, all of which involve different sets of characteristics and information sources. A fifth method of knowing, states Shapiro (personal communication, February 10, 2006), is that of revelation.

The method of tenacity is based upon the idea that individuals internalize existing beliefs and find it difficult to let go of the truth that is true because "it has always been true." Although this is our primary source of information, this creates a closed system in which new information is not welcome (Christian, 2005).

The second method of knowing, or fixing belief is that of reference to authority. A common method of knowing, this method involves citing an authority on the topic. This citation is then used as the source of knowledge. This method can result in a slow transference of knowledge, dependant on the rate of progress of the authority. In addition, "second-hand" facts are the most difficult to deal with (Christian, 2005).

A priori is the third method of knowing, or fixing belief. It is reflective of intuitive knowledge, without gathering data. Usually the *a priori* approach is logical or considered reasonable. This method produces new facts from data already in an individual's mind. The problem with this approach is that an individual's intuition is not always without fallacy (Drew, 1976).

An additional method of knowing, or fixing belief is the method of science. An objective collection of data and a pathway of logic must be identified and explained so as to result in a knowledgeable conclusion of fact. The method of science serves as the framework for research, taking us from the known to the unknown.

Revelation is the last method of knowing, or fixing belief. *Webster's Third New International Dictionary*, 2002, indicates that revealing is "a making known or setting forth sometimes comparable to unveiling. It may apply to supernatural or inspired revelation, to simple disclosure, or to indication by signs, symptoms, or similar evidence" (p.1942).

Greek thinkers such as Aristotle used the syllogism as their basis for progressing from the known to the unknown. This deductive process provides a means of testing the validity of any given concept or idea. By deducing a specific concept or fact from the relationship of two or more general facts or principles, this method of research may be utilized. Using this method, a conclusion deduced properly from reliable premises is itself inevitably reliable (Hillway, 1956).

There are inherent weaknesses in the use of the syllogism, however. If one of the premises is in error, or is unrelated to the others, the conclusion may be erroneous.

An additional weakness is the dependence upon verbal symbolism.

Based on sense perception, chance, trial-and-error, tradition, authority, intuition, and generalization from experience are the ordinary ways in which everyone learns new concepts, facts, and applications (Hillway, 1956). A general body of knowledge can be attributed to drawing basic conclusions from experiences in the past. These experiences might be a result of chance, such as the discovery of fire, or from applying logic to an everyday problem in order to find a solution.

Logic represents a step forward in research. When applying logic, or reasoning things out, certain conclusions are based upon previous generalizations. Over time, the things learned are shared with others so that they become common knowledge.

Deductive and Inductive Reasoning

In research, there are two specific types of reasoning. The first is deductive reasoning, which uses logic that progresses from the general to the specific. It makes use of general ideas, statements, or theories and proceeds to make an inference about a specific instance. Deductive reasoning often finds itself relayed in “if...then...” statements. For an inference to be valid, one must infer correctly what the premises imply (Christian, 2005).

The second type of reasoning found in research is that of inductive reasoning. Inductive reasoning uses a type of “reverse logic.” It focuses on a specific case and infers generalizations from that initial information. It is often used in research to draw inferences back to original general ideas, statements, or theories (Drew, 1976).

Francis Bacon stressed the use of inductive reasoning as far back as the Middle Ages. He rejected the deductive logic of the syllogism in favor of inductive logic. In doing so, he employed the method of gathering empirical facts and recording them in 'Tables of Instances' (Henry, 2002). Termed mechanistic, the focus remains on provable fact and not on speculation or logic. Although a popular form of research, inductive reasoning cannot solve all scholarly problems (Hillway, 1956). Final conclusions are often reached by using a combination of both deductive and inductive reasoning.

Rationalism and Empiricism

The methods of inquiry used in research can be classified as either internal or external sources of knowledge. These methods are also known as rationalism and empiricism. When using rationalism, there is little emphasis placed on observable external data. The emphasis is placed instead on logic, reasoning, and intuitive intelligence (Drew, 1976). A major weakness in the use of rationalism results from the inability to analyze or control intuitive "truth" objectively (Hillway, 1956).

When utilizing the empirical approach, knowledge that comes as a result of factual investigation is emphasized. The human senses provide the primary source for empirical knowledge. "Through millions of single sense-events we build a fabric of empirical information which helps...interpret, survive, and control the world around us" (Christian, 2005, p. 161). This approach is utilized in the scientific method of research in which priority is placed on direct observations and experiences of a particular instance.

Scientific Method of Research

The scientific method of research is an orderly process that is used to develop studies into areas where there are questions. There are five basic steps making up the scientific method. They are: (1) identification of a problem to be investigated; (2) collection of important facts that relate to the problem; (3) a tentative selection of solutions to the problem based upon the facts collected; (4) evaluation of these solutions; and (5) a selection of the most plausible final solution to the initial problem. Most modern research incorporates these steps into its process (Denzin & Lincoln, 2005).

The scientific method assumes that there is a cause for every effect and it validates a solution only when supported by evidence. It requires both direct observation and experiment, and rejects conclusions based upon logic or reasoning alone. This method uses logic to show relationships between related ideas and bases conclusions upon factual evidence (Ertmer, 2004).

Although the scientific method lends itself to areas such as mathematics and science, it can be extended into non-scientific fields as well. It serves “to widen the basis for rational agreement among men and to give our values more validity by anchoring them more firmly in what we can prove to be so” (Hillway, 1956).

Quantitative v. Qualitative

There are two basic categories of research. One is the quantitative method and the other is the qualitative method. The turn of the century found more emphasis placed upon quantitative research, while qualitative research grew steadily in popularity

throughout the twentieth century. Both types of research employ different methods and serve different purposes.

Quantitative research relies heavily on the analysis of numerical data. The most recognized quantitative method of research is that of scientific inquiry. Hillway (1956) describes this method of research as “a method of study by which, through the careful and exhaustive investigation of all the ascertainable evidence bearing upon a definable problem, we reach a solution to that problem.”

Qualitative approaches “cross the boundaries between various institutions and the social and cultural contexts in which they exist to tell a story of why things happen” (Adler, 1997, p.7). Qualitative research can be broken down into several types: (1) case studies; (2) historical perspectives; (3) surveys; (4) cross-sectional studies, and (5) longitudinal studies. While case studies evolve around the study of one subject or a group of subjects, historical perspectives consist of gathering data from the past and present to derive implications concerning specific situations, trends, or values. Cross-sectional studies rely on information gathered from specific subjects over varied areas, while longitudinal studies require following a subject, or group of subjects, over a long period of time.

All of these research methods, according to Adams and Schvaneveldt (1991), require gathering and interpreting data. An important, and common, method of gathering and interpreting data is content analysis. Content analysis refers to the process of assessing contents of documents by using objective, systematic, and typically quantitative criteria. These features can make it reliable and valid. Content analysis can be either

quantitative or qualitative in nature. Quantitatively, the goal is to determine frequency or duration of events, while qualitatively the goal is to understand subjective content such as attitudes or values (Holsti, 1969).

As a social construction, the law reflects our society. In *Qualitative Research of Legal Issues* (1997), Adler states, “Qualitative research methods are ideally suited to exploring the questions of why and how society, through its courts and legislative bodies, has created specific laws. Knowledge of the why and how is crucial to those who must carry out laws in a democratic society, Also important are questions about the effects or consequences of the law which can be both intended and unintended” (p.3). She continues, “Legal research in education covers: (a) those formal acts of government that shape public education, (b) legal cases that involve education agencies, and/or (c) development of legal precedents.”

Historical Method

Using documents, understanding the historical method, and knowing how to use content analysis are important factors for the researcher in understanding and using records of the past. Adams & Schvaneveldt (1991) describe historical research with documents as involving three primary activities: (1) searching for and sorting the collected facts, (2) interpretation, and (3) the written word or narration. Nevins (1938) notes that history allows people to sense their relationship with the past, understand their present moment, and to a degree determine their course in the near future.

Using a historical method of research allows one to accomplish with already existing records what is impossible to do with gathered primary data. It is not practical

time-wise to go out into the “field” and gather primary data on a variety of problems for research when perhaps equally good data are already available and can be analyzed much more rapidly than primary data (Pitt, 1985). Historical perspectives in research help the investigator to use the best time period for understanding some event or process. This time perspective is of great importance for identifying the chains of events that lead to an important issue or consequence of an event (Adams & Schvaneveldt, 1991).

Understanding and interpreting the historical sequence of events in a particular area can help in anticipating or predicting future happenings.

Exploratory Research

The historical perspective employs two major methods of gathering data. These methods are categorized as either exploratory or descriptive. The exploratory method is one by which the researcher seeks out new information, new insights, and makes observations. Exploratory studies are less structured and are effective for use in less developed areas. “Exploratory research serves three main purposes: (1) to satisfy curiosity, (2) to build methodology that might be used in later, more tightly designed research, and (3) to make recommendations regarding the possibility of continuing with additional research on the topic” (Adams & Schvaneveldt, 1991, p. 104).

Exploratory research is extremely flexible in nature. The initial focus of the study tends to be rather broad, narrowing progressively as the research continues. In this type of research, a theory should serve only as a guide.

Descriptive Research

Descriptive research seeks to acquire evidence concerning a situation or population, it identifies norms or baseline information which can be used for comparative purposes, and it serves to determine how and if one is to move to another type of research (Good, 1972). Descriptive research is most often used to inform, as a basis for decision-making, or as a fact-gathering stage in order to support or pursue additional research objectives. When using descriptive research, the focus is usually on events that are in the process of happening or that have previously taken place. In this type of research, strong validity depends greatly on the clear writing style and correct word usage by the researcher (Adams & Schvaneveldt, 1991).

Reliability and Validity

Reliability in research refers to the extent to which the researchers' findings can be replicated. In social sciences reliability is an issue because human behavior never remains the same. In a qualitative study, reliability can be addressed by measuring the reliability of documents and personal accounts through various techniques of analysis and triangulation (Merriam, 1991). Because there appears to be a direct linkage between reliability and validity in qualitative studies, it is favorable to relinquish reliability concerns for those of validity. "Since it is impossible to have internal validity without reliability, a demonstration of internal validity amounts to a simultaneous demonstration of reliability" (Guba & Lincoln, 1981, p.120).

There are four types of "interpretive validity" described by Altheide and Johnson (1994) that are used to gauge the validity of qualitative research. They consist of (1)

usefulness; (2) contextual completeness; (3) research positioning, and (4) reporting style. Usefulness refers to the value of the report to those who read it or to those who were studied. Contextual completeness refers to the overall comprehensiveness of the study. Research positioning reflects the researchers' awareness of their own influences in the research setting. Words such as "dependability" or "consistency" are often substituted for "reliability" and "validity" in qualitative studies as it is more important that, "given the data collected, the results make sense-they are consistent and dependable" (Merriam, 1991, p.172).

Common strategies utilized to increase reliability and validity in a qualitative study include triangulation, member checking, chain of evidence, outlier analysis, pattern matching, and representativeness checking. Triangulation refers to the use of more than one method of collecting and verifying data, or more than one theory to check the validity of the results. Member checking requires having participants in the study review the findings for accuracy. Chain of evidence strengthens the validity of the study by establishing a strong, direct link between the research questions, methodology, data, and findings of the study. Outlier analysis refers to the examinations of those cases that are decidedly different from the majority of the findings. Pattern matching looks for patterns across observations that match those that were expected.

In this particular study, a chain of evidence relating the history and evolution of ESE legislation, and the litigation and findings concerning school discipline were used to increase the validity of the study. The chain of evidence method lends itself to the historical perspective of research and is critical for assessing the linkages of events that

lead to an important issue or consequence of an event (Adams & Schvaneveldt, 1991). In addition, pattern matching was utilized to indicate if a pattern emerges which indicates a relationship between court decisions concerning school discipline and whether or not the students involved had disabilities or were students without disabilities. This method served to provide additional strength to the validity of the study. The triangulation method was used to collect data from various sources such as surveys and interviews so as to increase the validity of this study as well. Information was collected from a variety of Supreme and appellate court cases, case studies, federal and state statutes, administrative guidelines, and legislative documents.

Summary

Although research reaches far back into prior civilizations, it has been refined to methodical studies, which follow certain guidelines. For the purposes of this study a qualitative design has been selected due to the emphasis placed on documentation review, interviews, and surveys. A quantitative design has not been used due to its emphasis on the analysis of numerical data.

With the emphasis on data collection from documents, this study took on the form of a historical perspective, utilizing current court cases at the appellate level or above. The historical perspective involves the gathering of data already contained in available documents. The historical perspective lends itself to this study, as it is not practical to gather new primary data when good data already exists and can be much more quickly analyzed.

This study focused on past and present federal and state legislation with regard to students with disabilities and their crusade to obtain equality in public schools. It followed the evolution of terms such as “due process, change of placement, exclusion, and manifestation.” This search of documents and court cases aided in determining the standing of federal and state legislation regarding the differential discipline of students with disabilities as compared with students without disabilities. In addition, it provided information as to the standing of the courts’ decisions regarding the differential discipline of students with disabilities as compared with those students without disabilities.

Interviews with outstanding authorities in the areas of law and education helped to identify the consistencies and inconsistencies in the treatment of students with disabilities as compared with students without disabilities. These interviews, along with surveys of teachers, staff, and parents addressed the issue of differential treatment of certain populations of students in school. The review of federal and state legislation, relevant court cases, administrative guidelines, along with the interviews and surveys, provided insight as to how court decisions appear to impact differential treatment of students in school settings. Results from the use of these methods of research aided in the determination of whether or not the law impacts the behavior and discipline of students with disabilities. Finally, a review of useful court cases provided information necessary to determine if there is a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues.

Reliability and validity of the study was addressed through the use of triangulation, chain of evidence, and pattern matching. The use of these methods aided in the strengthening of the “consistency” or “dependability” of the study. Ultimately, the study focused around the issue of differential treatment in disciplinary consequences issued for both students with disabilities and their non-disabled peers. It examined how the law impacts the behavior and discipline of students with disabilities and those without. It focused on the possible shifting of balance to one in favor of students with disabilities with regard to disciplinary issues such as suspensions and expulsions in public schools. Finally, the study focused on any legal and/or ethical rationales involved in the interpretation and application of current educational legislation.

Chapter Four

Findings

Introduction

A study of the history of the public educational process reveals many consistencies and inconsistencies in the treatment of students with disabilities as compared with their non-disabled peers. A combination of a review of past federal and state education legislation, recent court decisions with regard to school/student discipline, interviews with outstanding authorities in the areas of law and education, and survey results from secondary school teachers was used to collect information on the differences in treatment of certain populations of students in school systems with regard to discipline. Consideration was given as to how those differences impacted the discipline of students with disabilities in schools, and to teacher perceptions of those differences.

Review of Educational Laws

Federal and state legislation dating from the late 1800's was reviewed, chronicling the development of legislation to insure an appropriate education for persons with disabilities. A synopsis of the legislation enacted since 1950 and its impact on education of various student populations is outlined below.

Civil Rights Act of 1964:

This act promoted the practice of desegregation of students in schools. It addressed the issue of separate but equal opportunities and provided for the withholding of federal education funds for noncompliance. The Office of Education became the policing agency that determined whether or not school systems were segregated, and by applying pressures to those systems deemed to be segregated, forced those systems to comply with federal regulations.

Elementary and Secondary Education Act (ESEA), 1965:

With the passage of the Elementary and Secondary Education Act (ESEA) in 1965, money was allocated to supplement the needs of children who resided in low socioeconomic areas where there was a concentration of low income families. Often referred to as “Chapter 1 money”, this money was to be used to supplement students’ educational needs in areas of mathematics, reading, and language. If misused, federal government money allocated under Chapter 1 could be recovered from the states, as determined in *Bell v. NJ*, (1983).

Rehabilitation Act of 1973 (Section 504) 29 U.S.C. § 794:

Recipients of federal financial assistance may not discriminate on the basis of disability.

Education for All Handicapped Children Act – 1975, 20 U.S.C. Sections 1400-1461:

This act is commonly known as PL 94-142. It is a grant statute to provide for the support of special education to states that implement a plan to provide a free and

appropriate public education to all children with disabilities so that special education and related services will be available on an individualized basis. It is important to note that due process protection must be in place to ensure compliance.

Perkins Act –1984, 20 U.S.C. §2301, 2332-34:

Ten percent of all federal funding for vocational education must go toward the education of students with disabilities. Vocational education is to be provided in the least restrictive environment. This act was an important step toward recognizing the importance of special education in the secondary schools and as part of the transition to adulthood.

Handicapped Children's Protection Act of 1986, 20 U.S.C. Section 1415(e)(4):

This amendment to the EAHCA provides for attorney's fees and costs to be awarded to parents who are prevailing parties.

Education of the Handicapped Act Amendments of 1986, 20 U.S.C. 1471 et seq. and 1419 et seq.:

These amendments provide for a phase-in of early intervention services for three- to five-year-olds, to be mandatory by 1990. They also contain an incentive program for younger children.

Civil Rights Restoration Act of 1987, 29 U.S.C. §706(7)(8)©:

This act amended Section 504 of the Rehabilitation Act to clarify that *all* portions of an educational agency are considered to be part of the program. In addition, it adopted the *Airline* characterization of contagious diseases as handicaps within the Rehabilitation Act.

Individuals with Disabilities Education Act (IDEA) (1990):

Amending the EAHCA by changing the title of the act, it provided for transitional programming and assistive technology as related services, and a number of other provisions. It did not significantly change the existing act.

Americans with Disabilities Act (ADA) (1990):

This was a major civil rights statute prohibiting discrimination on the basis of disability by most employers, public agencies, and public accommodations. It provided coverage similar to Section 504, but it did not require one to receive federal financial assistance to be subject to the ADA. Title II applies to public schools; Title III applies to private schools.

Gun-Free Schools Act of 1994:

The Gun Free Schools Act provides for the expulsion, for at least one year, of any student who possesses a weapon on school grounds.

Individuals with Disabilities Education Act Amendments of 1997 20 U.S.C.

Chapter 33:

The reauthorization of IDEA promoted more parental involvement and participation by regular education teachers in the development of a student's individual education plan (IEP). It also provided that students with disabilities were not to be punished for behavior that is a manifestation of the disability. Additionally, it provided that there may not be a cessation of educational services for a student with a disability who is suspended or expelled from school for more than ten days during a year.

Individuals with Disabilities Education Act Amendments of 2004(PL 108-446):

Although much of the Act has remained intact, there are substantial differences in the areas of paperwork production, legal processes, and guidelines for schools when dealing with discipline issues of students with disabilities.

Court Case Review

Four hundred forty-four appellate court cases were reviewed, spanning every judicial district in the United States. These court cases centered on the questions of due process for students, free and appropriate public education, and the safe and orderly climate of public schools. Ninety-five of the court cases reviewed were chosen for inclusion in this study based upon the type of offense committed by the student, whether or not the student was categorized with a disability, and the impact the case law had on future similar cases heard by the courts.

Of the cases reviewed, the court ruled in favor of the school in sixty-six cases and ruled in favor of the student in twenty-nine cases. Rulings in favor of the schools included four that involved students with disabilities and sixty-two that involved students without disabilities. Of the twenty-nine cases in which the court ruled in favor of the student, twenty-one students were those with disabilities as opposed to eight who were not.

Cases were categorized into general areas of violations or offenses. Offenses of a single instance were not included in Table 1. In the area of weapon violations on school campus, eight out of nine cases involving students with disabilities were decided in favor of the student. One case involving a student with a disability and a weapon was decided in favor of the school. Conversely, of the fifteen weapons cases brought before the courts

involving regular education students, the courts found in favor of the schools in all fifteen cases.

Of the cases involving drugs and/or alcohol offenses, three involved students with disabilities and eight did not. The courts ruled in favor of the student with a disability in one of the three cases, finding for the schools in the other two. Of the eight cases involving students without disabilities, all eight were upheld in court.

Four cases addressing injuries to other students were surveyed. Of the four, two involved students with disabilities and two did not. Both cases involving students with disabilities were resolved in favor of the students, while both cases involving regular education students were resolved in favor of the schools. This same pattern was repeated with respect to the four fighting incidents examined.

First Amendment violations include a variety of situations. These include the making of a homemade newspaper, posting threatening letters, creation of questionable web sites, and threatening poems. Of these types of expression, two involved students with disabilities and nine involved regular education students. Of the two cases involving students with disabilities, courts found in the student's favor on both occasions. Of the nine regular education student violations, courts found in favor of the schools in six cases and for the student in three cases.

There were six sexual assault cases reviewed although all of the cases involved students without disabilities. Of those involved, courts found in favor of the school on five of the six occasions. Two sexual harassment cases involving regular education students were reviewed as well. Findings for both of these cases favored the schools.

Seven bomb threat offenses were examined, revealing findings for the school in all five cases involving students without disabilities. In the two cases involving students with disabilities, courts found in favor of the student once and in favor of the school once.

Injury to teachers was another area that was reviewed. In this area, five cases were reviewed. Four of the cases included regular education students while one case involved a student with a disability. Of the cases involving regular education students, all five were determined to be in the schools' favor. The one case involving a student with a disability was disposed of in the student's favor.

The areas of felony theft and vandalism were combined for the purpose of charting results. Of the six cases examined, one involved a student with a disability while the other five cases did not. The results of the court favored the student with the disability in that case and favored the school in all five of the other cases involving students without disabilities.

A general heading of school disruption included disrespect, defiance, and constant classroom disruption. Of the four cases cited, the courts found in favor of the school in the three cases involving regular education students and also in the one case involving a student who suffered from a disability.

The category of racial/ethnic slurs includes situations in which clothing was worn that was considered offensive to certain populations of students. Two cases were reviewed. One case involved a student with a disability and the court found in favor of that student. The second case involved a regular education student and the court found for the school in that instance.

Often, issues brought before the court do not seem to have a direct relationship to the offense committed. For example, a student might have received a consequence for writing a threatening letter about a teacher. The issue in court is not the threatening letter itself, but rather the student's right to write that letter under the First Amendment to the Constitution. Free expression is the issue, not the nature of the letter. Because of these differences, attention has been given to the areas addressed in court.

Of the ninety-five appellate court cases chosen for this study, thirty basic issues were brought before the court. Of the issues brought forth, twenty-three were for possible due process violations. Of those twenty-three, six addressed students with disabilities and seventeen addressed students without disabilities. Courts ruled in favor of the students with disabilities in 100% of the cases and against those students without disabilities in 100% of the cases.

The second most prevalent issue was that of infringing on First Amendment rights. Of the ten cases brought before the courts, four involved students with disabilities while six involved students without disabilities. In 100% of the cases, the courts ruled in favor of the students with disabilities while in the other cases, the courts ruled in favor of the students in 33% of the cases and in favor of the schools in 67% of the cases.

The conducting of "bad searches" was another area brought to the court to examine. All six of the cases reaching the appellate level involved students without disabilities and, in all six cases, the courts found for the schools.

TABLE 1. Court Findings by Student Offense

Offense	ESE STUDENT-FINDING FOR STUDENT	ESE STUDENT - FINDING FOR THE SCHOOL	REGULAR EDUCATION STUDENT-FINDING FOR THE STUDENT	REGULAR EDUCATION STUDENT-FINDING FOR THE SCHOOL
Weapons	8	1	0	15
Drugs/ Alcohol	1	2	0	8
Injury to student	2	0	0	2
Fighting	2	0	0	2
1 st Amendment Violations	2	0	3	6
Sexual assault	0	0	1	5
Bomb threat	1	1	0	5
Injury to teacher	1	0	0	4
Sexual harassment	0	0	0	2
Vandalism/ Theft (felony)	1	0	0	5
School disruption	0	1	0	3
Ethnic or racial slurs	1	0	0	1

Six cases addressed the issue referred to as “should have known”. This refers to the assumption that school officials should have known that a student was capable of committing a specific offense and should have taken steps to prevent it from occurring. Of those cases brought before the courts, one involved a student with a disability and five involved those without. The courts ruled in favor of the student with disabilities and in favor of the school in the cases of the five students without disabilities.

An additional six cases reflected issues concerning consequences given out by the schools. In all six cases, parents felt that the consequences their children received were too harsh for the offense committed. Of these six cases, one involved a student with a disability and five involved regular education students. The courts found in favor of the student with the disability in this case, and found in favor of the schools in all five of the cases involving regular education students.

Five cases concerning the provision of a Free and Appropriate Public Education (FAPE) were brought before the courts on behalf of students with disabilities. In all five cases, the appellate courts ruled in favor of the students.

Seven additional cases addressed the issue of the “stay-put” rule. This rule requires a student with a disability to remain in his/her current placement until a determination at an IEP meeting can be made. Of the seven cases finding their ways to the appellate court level, one involved a student with a disability and six involved regular education students. In all seven cases, the courts found in favor of the schools.

On two occasions, cases involving the reimbursement for private school tuition came before the courts. One case involved a student with a disability and one case

involved a student with no disability. The courts found in favor of the student with a disability and found in favor of the school in the case involving the student without a disability.

The court was asked to rule in three different cases involving students committing felonies while off school campus. All three involved regular education students and, in all three cases, the courts found in favor of the students. The question of vague school rules was brought before the court on three occasions. All three cases involved students without disabilities, and the courts found in favor of the schools in all three cases.

Two cases focused on the question of the enforcement of an injunction to keep a “dangerous” student out of school. One case involved a student with a disability and one case involved a student with no disability. The courts found in favor of the student with a disability and allowed him to return to school, but found in favor of the school in the case involving a student with no disability and ordered the injunction to be enforced.

In two instances, the question before the courts involved the definition of a firearm. One case involved a student with a disability and one case involved a regular education student. The court ruled in favor of the student with a disability who discharged a BB gun and ruled against the regular education student who brandished a toy gun at school.

In single cases involving students without disabilities, a possible injury to a student, the length of an expulsion, a possible exceeding of authority by school officials, and a possible civil rights violation, the courts found in favor of the schools. In single cases involving a student with a disability, issues such as Fifth, Sixth, and Fourteenth

Amendment rights were addressed, along with issues such as court ordered attendance and loss of grades during a suspension. In each of these cases, the courts found in favor of the student.

Table 2 reflects the issues brought before the court for resolution and the outcomes of those court rulings. Single instance issues are not reflected in the table, although addressed above.

Judicial Districts

There are thirteen Federal Judicial Circuits in the United States. All of the cases reviewed for this study have been categorized by the Federal Circuits in which they were heard. All of the cases were heard by courts at the appellate level or above. Of the ninety-five cases chosen for inclusion in this study, sixteen of the cases heard by courts occurred in the 7th Circuit. The 7th Circuit includes the states of Illinois, Indiana and Wisconsin. Second, with fifteen cases heard was the 6th Circuit that includes Kentucky, Ohio and Tennessee. With fourteen cases heard was the 8th Circuit that includes Arkansas, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota. The 10th Circuit heard the fewest number of cases, having only four brought before it for rulings. Table 3 reflects the number of cases heard by each circuit and summarizes the findings of the courts.

TABLE 2. Court Findings by Litigating Issue

ISSUE	ESE STUDENT-FINDING FOR STUDENT	ESE STUDENT - FINDING FOR THE SCHOOL	REGULAR EDUCATION STUDENT-FINDING FOR THE STUDENT	REGULAR EDUCATION STUDENT-FINDING FOR THE SCHOOL
Due process	6	0	0	17
1 st Amendment	4	0	2	4
“Bad searches”	0	0	0	6
Too harsh consequences	1	0	0	5
FAPE	5	0	0	0
“Stay-put” rule	0	1	0	6
Tuition reimbursement	1	0	0	1
Felonies committed off campus	0	0	3	0
Vague rules	0	0	0	3
Injunctions	1	0	0	1
Definitions of firearms	1	0	1	0

Research Questions

Outstanding authorities in the areas of law and education were asked to respond to questions concerning their views on how laws impact the differential treatment of various school populations. When asked about consistencies and inconsistencies in the treatment of students with disabilities as compared with those students without disabilities, Dr. R. Hirst, professor of educational law and finance (personal communication, June 22, 2005), responded, “While the difference in standards for disabled students is evident, this scenario was created to ‘level’ the playing field for disabled students.” When asked the same question, behavior specialist J. Hernandez (personal communication, April 17, 2005) stated, “ESE students get several more chances than do regular education students when it comes to discipline. Consequences do not appear as severe for the same violations.” M. Pollard, a member of the Florida Department of Education (personal communication, December 15, 2003), responded that she did not feel there were any inconsistencies in the treatment of students with disabilities as compared with those students without disabilities.

The next question was “Do legislation and court decisions appear to foster differential treatment of certain populations of students in school and to what degree do legislation and court decisions appear to impact differential treatment of students in school settings?” Dr. R. Hirst (personal communication, June 22, 2005) stated that he believes that law does, in fact, foster differential treatment of certain populations of students in school. However, he states, “the courts have determined that the rights of

disabled students to a free and appropriate education are more important than a system that treats all students the same in reference to performance standards and discipline consequences.” J. Hernandez (personal communication, April 17, 2005) agreed. “Yes. Laws passed to promote equal opportunities for all children have, in effect, fostered a classification system that provides for unequal treatment of various populations.” M. Pollard (personal communication, December 15, 2003) responded that she did not feel that legislation and court decisions appear to foster differential treatment of certain populations of students in school settings.

When asked, “How does the law impact the behavior and discipline of students with disabilities?” Dr. R. Hirst (personal communication, June 22, 2005) responded, “Disabled students have greater protection than non-disabled students. Consequences for breach of discipline standards are different for disabled students as opposed to non-disabled students.” J. Hernandez (personal communication, April 17, 2005) added,

“Over fifty percent of discipline issues in schools revolve around approximately ten percent of the student body. Of this ten percent, the majority of the students are classified as ESE students and, by law, remain in school for violations that regular education students are sent home for. Educators must deviate from the consistency of a discipline matrix when dealing with ESE students. FAPE limits the number of days an ESE student can be suspended. Discipline procedures often do not seem to apply to these students.” M. Pollard (personal communication, December 15, 2003) felt that she was unable to answer this question due to the fact that she worked at the state level and not directly in the schools.

The final question asked was “Is there a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues?” Dr. R.Hirst (personal communication, June 22, 2005) responded, “For the most part the courts have held that the standards as set forth in IDEA and Section 504 of the Rehab Act of 1973 are the benchmarks for decisions relative to special populations.” J. Hernandez (personal communication, April 17, 2005) added, “I am not aware of any relationship in this area. I would assume that there might be, given the various geographical areas of the U.S. and their varying populations. I have not seen any studies done in this area.” M. Pollard (personal communication, December 15, 2003) responded that she had not seen any research in this area and was unable to offer an answer.

TABLE 3. Court Findings by Federal Judicial Circuit

FEDERAL JUDICIAL CIRCUIT	ESE (disabled) STUDENT-FINDING FOR STUDENT	ESE(disabled) STUDENT - FINDING FOR THE SCHOOL	REGULAR EDUCATION(non-disabled) STUDENT-FINDING FOR THE STUDENT	REGULAR EDUCATION(non-disabled) STUDENT-FINDING FOR THE SCHOOL
1 st	0	1	1	4
2 nd	0	0	0	7
3 rd	1	0	0	5
4 th	3	1	0	2
5 th	2	0	0	6
6 th	3	0	1	11
7 th	1	3	1	11
8 th	4	0	1	9
9 th	4	0	1	4
10 th	0	0	1	3
11 th	3*	0	0	3

*Reflects a ruling from a lower court that was overturned by the appellate court in favor of the student.

Surveys

One hundred discipline surveys were distributed to teachers at the secondary school level in May of 2004. This survey was conducted prior to the reauthorization of IDEA in late 2004. Of the one hundred surveys distributed, sixty-two were completed and returned. Persons chosen to participate in the surveys for this study were selected based upon their accessibility and positions as secondary public school teachers. Participants were asked to indicate agreement, disagreement, or no opinion to the following statements. The no opinion responses were discarded and the agree or disagree responses were tabulated. The results were as follows:

1. There is no difference in educational services provided for disabled and non-disabled students who have been expelled from school.

70.5 % - Disagree

29.5% - Agree

2. Regardless of whether a behavior is part of a student's disability, the student should be disciplined in the same manner as a non-disabled student.

40% - Disagree

60% - Agree

3. Recent legislation has stripped schools from their ability to discipline ESE students.

30% - Disagree

70% - Agree

4. There is an increased feeling of safety within schools due to "zero tolerance" laws.

60.5% - Disagree

39.5% - Agree

5. Students with disabilities are aware of their legal rights with regard to discipline.

21.5% - Disagree

78.5% - Agree

6. Non-disabled students are aware of their legal rights with regard to discipline.

53.5% - Disagree

46.5% - Agree

7. Teachers have the right to remove permanently a disruptive student from their classrooms.

66.5% - Disagree

29.5% - Agree

8. Current laws protect teachers adequately from physical harm by students.

80.5% - Disagree

19.5% - Agree

9. Students with disabilities are provided differential treatment with regard to disciplinary actions.

24.5% - Disagree

74.5% - Agree

10. Both students with and without disabilities receive the same treatment when they violate a school rule.

83.5% - Disagree

16.5% - Agree

11. Students without disabilities receive the same degree of due process as those with disabilities.

81% - Disagree

19% - Agree

12. Most faculty and staff do not feel that schools provide a safe environment in which to work.

46.5% - Disagree

53.5% - Agree

13. Those in charge of handling discipline matters at the school level are thoroughly familiar with laws regarding disabled students.

57% - Disagree

43% - Agree

14. All students are afforded the same due process when involved in discipline matters.

75.5% - Disagree

25.5% - Agree

Summary

When reviewing federal and state legislation concerning education from 1950 to present, an apparent focus on providing “an equal opportunity to education” for all children is evident. As the historical period changes, so do the groups of children being targeted as discriminated against. As each new sub-group is identified, education policy is formulated to address that particular population. With new education policy comes “rules and regulations for the provision of services, as well as funds and mechanisms for targeting funded services to particular populations or subpopulations. Embedded in each policy are assumptions about who the groups or individuals targeted by a policy are and

what they need” (Stein, 2004, p.6-7). The most legislated group in recent years has been that of students with various forms of disabilities. It is as a result of this legislation that court cases relevant to this study were available.

Of those cases involving zero tolerance offenses such as weapons and drugs, it appears that the courts view such violations to be manifestations of students’ disabilities and, as such, not punishable by the same consequences as those provided to their non-disabled peers who commit the same offenses. (See Table 1). In addition, the courts appeared to not hold students with disabilities accountable for violations such as fighting or injuries to others, unlike their non-disabled peers.

TABLE 4. Teacher Survey Responses

SURVEY QUESTION	DISAGREE	AGREE
1. There is no difference in educational services provided for disabled and non-disabled students who have been expelled from school.	70.5%	29.5%
2. Regardless of whether a behavior is part of a student's disability, the student should be disciplined in the same manner as a non-disabled student.	40.0%	60.0%
3. Recent legislation has stripped schools from their ability to discipline ESE students.	30.0%	70.0%
4. There is an increased feeling of safety within schools due to "zero tolerance" laws.	60.5%	39.5%
5. Students with disabilities are aware of their legal rights with regard to discipline.	21.5%	78.5%
6. Non-disabled students are aware of their legal rights with regard to discipline.	53.5%	46.5%
7. Teachers have the right to remove permanently a disruptive student from their classrooms.	66.5%	29.5%
8. Current laws protect teachers adequately from physical harm by students.	80.5%	19.5%
9. Students with disabilities are provided differential treatment with regard to disciplinary actions.	24.5%	74.5%
10. Both students with and without disabilities receive the same treatment when they violate a school rule.	83.5%	16.5%
11. Students without disabilities receive the same degree of due process as those with disabilities.	81%	19%
12. Most faculty and staff do not feel that schools provide a safe environment in which to work.	46.5%	53.5%
13. Those in charge of handling discipline matters at the school level are thoroughly familiar with laws regarding disabled students.	57.0%	43.0%
14. All students are afforded the same due process when involved in discipline matters.	75.5%	25.5%

When reviewing the courts' findings with regard to litigation issues brought before them, there is an apparent difference in the amount of due process to be afforded to students with disabilities as opposed to those students who do not have a disability. In addition, in those cases addressing the harshness of the consequences for an offense, the courts appeared to have agreed that students with disabilities were entitled to less harsh consequences than their non-disabled counterparts for the same offenses (See Table 2).

In summary, the courts found for the students with disabilities nineteen out of twenty-four times and found for the students without disabilities four out of sixty-three times. In addition, it is important to note that there were almost three times as many cases filed on behalf of students without disabilities as for those with disabilities. This might appear to indicate that parents of students without disabilities are looking for the same rights for their children as have their disabled peers. The fact that there are fewer cases involving students with disabilities reaching the appellate court level may also indicate that most of the cases involving these students are being resolved at a lower level. This could be indicative of the school systems' reluctance to enter a costly legal battle when percentages appear to indicate that they would lose their cases.

Of the thirty-four cases addressing the rights of students without disabilities, the courts found in favor of the students in three of the cases, or 8.8% of the time. One of the three cases decided in the students' favor occurred in each of the 6th, 7th and 8th Circuits. Thirty-one cases, or 91.2% of the cases involving these students, were decided in favor of the schools.

As reflected in Table 3, a review of the cases reviewed for this study indicates that 46% of the cases heard by courts at the appellate level were heard by courts in three of the thirteen Federal Judicial Circuits. These three circuits were the 6th Circuit with fifteen cases, the 7th Circuit with sixteen cases and the 8th Circuit with nine cases. Of these forty-five cases, eleven were brought forth on behalf of students with disabilities and thirty-four were brought forth on behalf of students without disabilities. Of those brought on behalf of students with disabilities, the courts ruled in favor of the students in eight of the eleven cases, or 72.7% of the time. The three cases in which the courts ruled in favor of the schools, and against these students, were all decided in the 7th Circuit.

When interviewing authorities in the area of law and education, it was noted that those involved in school site interactions with students seemed to be knowledgeable of the legislation passed with regard to students with and without disabilities. It was apparent however, that there was some sense of frustration with the inconsistencies in the disciplining of the various populations of students. Those authorities in the area of law worded their answers to reflect their knowledge of education legislation but expressed a somewhat resigned view of the abilities of schools to render discipline equally to both students with disabilities and those without. Interviews with state Department of Education officials were, for the most part, noncommittal in all areas.

Surveys issued to teachers were voluntary and anonymous. The responses indicated strong feelings by the teachers that “schools have been stripped from their ability to discipline ESE students” (70%). In addition, teachers do not feel safe at school

as indicated by an 80.5% disagreement with the statement that “current laws protect teachers adequately from physical harm by students.” This is further emphasized by a 60.5% disagreement with the statement that “there is an increased feeling of safety within schools due to ‘zero tolerance’ laws.”

In the areas of student awareness, teachers feel strongly (78.5%) that students with disabilities are aware of their legal rights with regard to discipline while only 46.5% feel that their non-disabled peers are aware of those same rights. Teachers themselves are unaware (66.5%) that they have the right to remove permanently a disruptive student from their classrooms. 57% of the teachers surveyed also feel that those handling discipline matters at the school level are not thoroughly familiar with laws regarding students with disabilities. Finally, teachers feel strongly (83.5%) that students with disabilities and those without disabilities do not receive the same treatment when they violate a school rule, but that those students with disabilities are provided differential treatment with regard to disciplinary actions (74.5%). 60% of those teachers surveyed feel that regardless of whether a behavior is part of a student’s disability, the student should be disciplined in the same manner as his non-disabled peer, and 75.5% feel that students with disabilities are afforded more due process than their non-disabled peers when involved in discipline matters.

These survey results appear to reflect a feeling by teachers that differential treatment is predominant when dealing with issues of discipline and students with disabilities. Teachers do not seem to feel safe at school, despite the zero tolerance

policies enacted by the state. In addition, there appears to be a frustration with those handling discipline incidents within the school settings.

In conclusion, there appears to be distinct differential treatment afforded students with disabilities as reflected by the court cases reviewed, the interviews with leading authorities in the areas of law and education, and as indicated on the teacher surveys regarding safety and school discipline of students with and without disabilities. It is unclear from these results as to what effect these data have on the actual school systems operations with regard to discipline.

Chapter Five

Summary, Observations, Conclusions and Implications

Introduction

Throughout American history, public schools have functioned as an “agency of socialization and social control” (Shipman, 1975, p.14). As such, schools have continued to evolve in response to the pressures placed upon them by the social organizations they serve. In response to these social pressures, the schools continue to change and become more specialized, attempting to develop specific programs for the various student populations. The framework for the social molding of students has resulted from the need for the state “to intervene in the lives of children by helping to socialize them into what otherwise would appear as confusing, incoherent, and normless social environments” (Durkheim, 1998, p. 203).

Schools serve as only one part of society as a whole. Children spend only a fraction of their days within the school walls and a great deal of their hours within the community and home outside of school. The social world outside of school is often reflected in the social life within the school. The social systems found outside the school often result in pupils identifying with different values and norms. This identification

results in schools being forced to operate within boundaries imposed by “the wider society” (Shipman, 1975, p. 28).

Problem

Such interventions, along with the enactment of laws meant to equalize the opportunities of various populations, perpetuate differential treatment throughout American society. There are questions as to the nature and scope of these differences and to how this differential treatment affects the operation of our public schools. This differential treatment results in an inequity in education between those students with disabilities and those without. This essential inequity, state Kelman and Lester in *Jumping the Queue* (1998, p.16), is ...”flowing from their right to be spared the consequences of prejudice against their disability.” They define this special treatment as “substantial discipline immunity” (p. 195).

Appellate courts have ruled that serious violations of school rules by students without disabilities may result in a denial of public education through suspensions and/or expulsions while the same violations by students with disabilities must result in no cessation of educational services. This educational inequity with regard to the disciplining of students with disabilities, and their access to public education, has demonstrated itself through legal court rulings and given rise to possible legal and ethical issues.

The Individuals with Disabilities Education Act (IDEA, 1997, 2004) ensures all students with disabilities a Free and Appropriate Public Education (FAPE) regardless of their misbehaviors in school. Osborne and Russo (2003) state, “to protect their rights to a

free appropriate public education, however, and to ensure that those with behavioral disorders are not excluded from the educational process because of the very disabilities the IDEA sought to address, special procedures must be followed beyond those that are implemented for most students.”

These procedures are an attempt to adhere to government mandates while continuing to maintain a safe and orderly school environment. In addition, these procedures result in a set of different standards for various subpopulations of students in our public schools. The ramifications of employing these differing standards have not been well studied. A question remains as to the existence and extent of legal and/or ethical implications resulting from the inequities within the system.

Purpose

The purpose of this study was to investigate the legal standing of differential disciplinary treatment of special education and non-special education students in K-12 public schools. The focus of this study was on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems. An emphasis was placed on any preferential treatment afforded to students with disabilities through the implementation and interpretation of educational legislation. With school discipline as a major concern in today’s school systems, the study’s focus was in this area.

This study delved into the myriad of complex legislation passed before and after the inception of Public Law 94-142 in 1975. It studied the relationships between the school discipline of children who receive special education services and those who do

not. It searched the consistencies and inconsistencies in the treatment of these populations of students in school settings. It identified court cases dealing with school discipline and it provided a comparison of the rulings. It utilized interviews of outstanding authorities in the areas of law and education (e.g. school administrators, Department of Education specialists, and university professors specializing in the areas of educational law and finance) and developed and utilized surveys to discern understanding of various pieces of educational legislation by parents, students, and school officials. Research questions and survey items were developed in collaboration with members of this doctoral committee.

Finally, it attempted to formulate a theory that addresses the consistencies and inconsistencies in the treatment of children in public schools, along with the reinforcement of that treatment by the United States court system, and offers implications and recommendations for practice and for further research. Using the historical method of research, it afforded an overall historical perspective on legislation for students with disabilities, beginning with PL 94-142.

Research Questions

The following research questions were derived from both the problem and the purpose of this study. Consultations with members of my doctoral committee resulted in the approved research questions used. Given the focus of this study on the interpretation and application of federal and state education legislation by the courts and how the various judicial decisions affect the discipline practices in public school systems, these questions were determined to be appropriate. An emphasis was placed on any preferential treatment afforded to students with disabilities, through the implementation and

interpretation of educational legislation. With school discipline as a major concern in today's school systems, the research questions focused on these areas.

1. What is the standing of legislation regarding the differential discipline of students with disabilities as compared with the non-disabled students?
2. What is the standing of the courts' decisions regarding the differential discipline of students with disabilities as compared with the non-disabled students?
3. What are the consistencies and inconsistencies in the treatment of students with disabilities as compared with non-disabled students?
4. Do legislation and court decisions appear to foster differential treatment of certain populations of students in school?
5. To what degree do legislation and court decisions appear to impact differential treatment of students in school settings?
6. How does the law impact the behavior and discipline of students with disabilities?
7. Is there a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues?

Method

Although research reaches far back into prior civilizations, it has been refined to methodical studies, which follow certain guidelines. For the purposes of this study a qualitative design has been selected due to the emphasis placed on documentation review,

interviews, and surveys. A quantitative design has been determined to be inappropriate due to its emphasis on the analysis of numerical data.

With the emphasis on data collection from documents, this study has taken on the form of a historical perspective, utilizing current court cases at the appellate level or above. The historical perspective involves the gathering of data already contained in available documents. The historical perspective lends itself to this study, as it is not practical to gather new primary data when good data already exists and can be much more quickly analyzed. This study focused on past and present federal and state legislation with regard to students with disabilities and their crusade to obtain equality in public schools. It followed the evolution of terms such as “due process, change of placement, exclusion, and manifestation.” This search of documents and court cases aided in determining the standing of federal and state legislation regarding the differential discipline of students with disabilities as compared with students without disabilities. In addition, it provided information as to the standing of the courts’ decisions regarding the differential discipline of students with disabilities as compared with those students without disabilities.

Interviews with outstanding authorities in the areas of law and education helped to identify the consistencies and inconsistencies in the treatment of students with disabilities as compared with students without disabilities. These interviews, along with surveys of teachers, staff, and parents addressed the issue of differential treatment of certain populations of students in school. The review of federal and state legislation, relevant court cases, administrative guidelines, along with the interviews and surveys, provided

insight as to how court decisions appear to impact differential treatment of students in school settings. Results from the use of these methods of research aided in the determination of whether or not the law impacts the behavior and discipline of students with disabilities. Finally, a review of useful court cases provided information necessary to determine if there is a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues.

Reliability and validity of the study have been addressed through the use of triangulation, chain of evidence, and pattern matching. The use of these methods aided in the strengthening of the “consistency” or “dependability” of the study. Ultimately, the study focused around the issue of differential treatment in disciplinary consequences issued for both non-disabled students and students with disabilities. It examined how the law impacts the behavior and discipline of students with disabilities and those without. It focused on the possible shifting of balance to one in favor of students with disabilities with regard to disciplinary issues such as suspensions and expulsions in public schools. Finally, the study focused on any legal and/or ethical rationales involved in the interpretation and application of current educational legislation.

Legal History

Apart, as in combination, both equality of opportunity and the equality of educational opportunity have often been associated with the ongoing struggle for increased personal, or civil rights as granted under the Fourteenth Amendment to the Constitution (Spring, 2005). Civil rights refers to the right to an equal opportunity to gain

economic and social advantages, and equal treatment by the law. This is a right guaranteed to all citizens by the Fourteenth Amendment, regardless of their racial or ethnic background, gender, age, sexual orientation, or disabling condition.

Section 1985(3) of the Civil Rights Act defines a violation of civil rights as “...the depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws.” Disparities in treatment within school populations often refers to those students categorized as either students with disabilities or students without disabilities. Other civil rights violations in schools might be based upon gender, race, language or ethnicity, and social class. The attainment of civil rights in education is believed by many to directly relate to economic and personal success in adult society (Shipman, 1975).

In education, the right to equal opportunity to education has been a longstanding battle against various forms of discrimination. All groups have not had equal access to public schooling, in many cases as a result of specific laws. Prior to 1954, there were laws that required segregation by race in public schools. Laws were necessary to rectify the discriminatory educational practices against children from homes where English is not the spoken language, those children from low socio-economic backgrounds or who were homeless, children who happened to be females, and those children with disabilities which required special accommodations.

As a result of the long battle against discrimination in public schools, the federal government intervened with the passage of several laws such as the Civil Rights Act of 1964, the Elementary and Secondary Education Act (ESEA) of 1965, the Higher

Education Act of 1972, and the Education for all Handicapped Children Act (EAHCA), commonly referred to as Public Law 94-142 (PL 94-142) that was passed in 1975.

Passage of this legislation has resulted in increased litigation, additional restrictions on the use of federal monies, and increased scrutiny of programs by local, state and federal agencies.

After the *Brown v. Board of Education* decision dealing with integration in schools, it was felt that “the stigma attached to being educated separately and the deprivation of interaction with children of other backgrounds” (Rothstein, 1990, p.12) resulted in unequal treatment. This unequal treatment was in direct violation of the Fourteenth Amendment of the Constitution that guarantees every citizen safety from deprivation of “life, liberty, or property, without due process of law,” and guarantees “equal protection of the laws.”

The Civil Rights Act of 1964 allowed the government to pressure school systems to reduce segregation by threatening to withhold federal education funds or to threaten action through the courts. Unfortunately, since education has always been a responsibility of the individual states, application and enforcement varied from state to state.

Before the 1970's, most children with disabilities had no legally established right to a public education. Laws in many states expressed the belief that a child with disabilities “could not benefit from education and that his or her presence in the public schools would have an adverse effect on the welfare of the other students” (Johnson, 1986, p.1). As a result, most children with disabilities were expressly exempt from the state compulsory school attendance laws.

Most of the special education legislation passed during the 1960's and early 1970's consisted of grant programs which provided incentives for educating students with disabilities but really did not contain specific guidelines for implementation or methods of enforcement. Rothstein, in *History of Special Education Law*, (1990, p.12) states, "Identification and placement of children with disabilities was haphazard, inconsistent, and generally inappropriate. African-American, Hispanic, and some other ethnic groups were often stereotyped and disproportionately placed in special education programs."

When major special education legislation was passed in the form of The Education for all Handicapped Children Act (EAHCA), or PL 94-142, its goal was to bring an end to the discriminatory educational practices toward students with disabilities. Its goal was to provide a free and appropriate public education (FAPE) to all students, regardless of their disabilities. Since PL 94-142, numerous additional pieces of federal and state legislation have been passed to maintain and promote the educational rights of students with various disabilities.

In an effort to protect the civil rights of students with disabilities, and their families, more legislation has been passed. With the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997 and again in 2004, careful monitoring of legislation with regards to students with disabilities has begun to take place.

Monitoring of the implementation of programs designed to protect students' rights has included looking to the courts for determinations of violations. The 1969 Supreme Court case of *Tinker v. Des Moines School District* served to provide case law for future

disputes regarding First Amendment rights in schools. *San Antonio v. Rodriguez*, (1973) and *Goss v. Lopez*, (1975) emphasize that students do have a property interest in education, even though education is not a Constitutional right. In 1974, Title VI, which addressed discrimination based on language and ethnicity was again brought before the courts, along with the Equal Opportunity Act of 1974, in *Lau v. Nichols*. In this class action case against the San Francisco Unified School District on behalf of non English-speaking Chinese students, the court ruled that it does not constitute equality of treatment where the students do not understand English but are instructed solely in English.

Efforts to provide students with due process and continuing educational services (*Mills v. Board of Education of District of Columbia*, 1972) have resulted in an overabundance of court cases. The decision in the class action suit on behalf of a group of children with mental disabilities, *Pennsylvania Association of Retarded Citizens (PARC) v Commonwealth*, reiterated that lack of adequate funding could no longer be used as a defense for excluding students with disabilities from specific programs. As a result of this suit, Pennsylvania discarded a state law that relieved schools of the responsibility to enroll “uneducable” or untrainable” children (Hume, 1987).

The history of discipline procedures for children with disabilities has evolved sporadically over time, depending on the amount of public insistence at any given moment. Courts have consistently ruled (*Stuart v. Nappi*, 1978 and *Doe v. Koger*, 1979) that students with disabilities must be given special consideration in disciplinary proceedings. Disciplinary proceedings might result in consequences such as suspensions or expulsions from school for a determinate period of time.

The court concluded in *Stuart v. Nappi* (1978), that expelling children with disabilities is a change of placement and is inherently “inconsistent” with the statutory and regulatory procedures established for changing the placement of disruptive students with disabilities. Earlier court decisions prohibited expulsion, noting that, under Public Law 94-142, services must be provided through alternative placement in one of the other educational environments offered. Students without disabilities may be expelled however and, although it is desirable to find an alternate placement for such students, it is not required by law.

In 1981, expulsion again surfaced as an issue when nine students with mental disabilities in the state of Florida sued local school districts and the state, claiming that they had been denied an appropriate education due to expulsion. The court upheld expulsion in *S-i v. Turlington*, (1981) as a viable form of discipline to be used with students with disabilities. The court, however, pointed out that cessation of all educational programs violated the rights of students with disabilities; consequently even after expelling a student, services must be provided.

In *Honig v. Doe* (1988), the U.S. Supreme Court resolved the issue by making it clear that the law

“(1) confers a substantive right to education on students with disabilities, (2) prohibits school officials from unilaterally excluding a student with a disability from the classroom for dangerous or disruptive conduct for an indeterminate period of time *where conduct grows out of a disability*, and (3) permits school officials to temporarily suspend a student for up to ten days to protect the safety of others and to provide a ‘cooling down.’”

The number of cases reaching the appellate court level has steadily increased in direct proportion to the amount of legislation passed regarding student rights. Until

recently, most of the cases finding themselves before the courts represented issues regarding school discipline and students with disabilities and their particular rights under IDEA and civil rights legislation. Currently, cases involving students without disabilities are finding their ways onto the appellate court dockets as well.

School Compliance

IDEA (1997, 2004), Sec.1400©(1)(A) states the purpose to be “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living.” For schools to receive a share of the federal funding available for students with disabilities, they must comply with strict guidelines when addressing discipline issues for these students.

Most school districts “err on the side of caution” when dealing with discipline issues for students with disabilities so as not to lose funding or risk a lawsuit by unhappy parents. School administrators are pressured by their districts to keep students with disabilities in school, regardless of the disruption to the school process on a day to day basis. Most schools have a staff of professionals who deal with the monitoring of suspension days and the processing and documenting of the required paperwork for those students with disabilities.

Observations

Today’s public schools have the task of educating students in a safe environment, conducive to learning. In concordance with *No Child Left Behind* legislation, students are to receive a rigorous and relevant curriculum by highly qualified teachers. In addition,

schools are burdened with the societal obligation of creating responsible, self-sufficient, contributing adults as citizens of the United States. Although educational legislation has been passed to equalize the opportunities for all students in public schools, it has in fact contributed to a myriad of legal and financial problems for the schools instead.

The following observations have been made based on a review of the appellate court cases chosen for this study, the results of the survey administered to secondary public school teachers, and on the personal communications and interview questions answered by school administrators, Department of Education specialists, and university professors in the areas of educational law and finance. A historical review of education legislation, both federal and state, has impacted these observations. Books and articles relating to these issues have also served as contributions to this study.

1. Initial educational legislation indicated an effort to insure that all students, regardless of their ethnicity, gender, or disability would have an equal opportunity for a free and appropriate public education (FAPE). Subsequent legislation indicates a desire by the federal government to “micromanage” the implementation of federal legislation by the individual states by tying compliance to funding.

2. When reviewing the courts’ findings with regard to litigation issues brought before them, there is an apparent difference in the amount of due process afforded to students with disabilities as opposed to their non-disabled peers.

3. An overview of the cases reviewed for this study indicates that nearly one-half of the cases heard by courts at the appellate level were heard by courts in the three Federal Judicial Circuits that encompass most of the Midwestern states.

4. There appears to be a growing number of cases involving discipline issues of regular education students reaching the appellate court level. These cases are beginning to outnumber those cases involving students with disabilities.

5. When interviewing authorities in the area of law and education, it was noted that those involved in school site interactions with students seemed to be knowledgeable of the legislation passed with regard to students with and without disabilities. It was apparent however, that there was some sense of frustration with the inconsistencies in the disciplining of the various populations of students.

6. Responses to the surveys issued to teachers prior to the reauthorization of IDEA in late 2004 indicated strong feelings by the teachers that “schools have been stripped from their ability to discipline ESE students” (70%). In addition, teachers do not feel safe at school as indicated by an 80.5% disagreement with the statement that “current laws protect teachers adequately from physical harm by students.” This is further emphasized by a 60.5% disagreement with the statement that “there is an increased feeling of safety within schools due to ‘zero tolerance’ laws.” These survey results appear to reflect a feeling by teachers that differential treatment is predominant when dealing with issues of discipline and students with disabilities. Teachers do not seem to feel safe at school, despite the zero tolerance policies enacted by the state. In addition, there appears to be a frustration with those handling discipline incidents within the school settings.

Summary of findings

When reviewing federal and state legislation concerning education from 1950 to present, an apparent focus on providing “an equal opportunity to education” for all children is evident. As the historical period changes, so do the groups of children being targeted as discriminated against. As each new sub-group is identified, education policy is formulated to address that particular population. With new education policy comes “rules and regulations for the provision of services, as well as funds and mechanisms for targeting funded services to particular populations or subpopulations. Embedded in each policy are assumptions about who the groups or individuals targeted by a policy are and what they need” (Stein, 2004, p.6-7). Stein continues, “Attention is most often paid to the characteristics of individuals rather than the structures of society that contribute to unequal and inequitable like circumstances” (p. 7). The most legislated group in recent years has been that of students with various forms of disabilities. It is as a result of this legislation that court cases relevant to this study were available.

Of those cases involving zero tolerance offenses such as weapons and drugs, it appears that the courts view such violations to be manifestations of students’ disabilities and, as such, not punishable by the same consequences as those provided to students without disabilities for the same offenses. In addition, the courts appeared to not hold students with disabilities accountable for violations such as fighting or injuries to others, unlike their non-disabled peers.

When reviewing the courts’ findings with regard to litigation issues brought before them, there is an apparent difference in the amount of due process to be afforded

to students with disabilities as opposed to students with no disabilities. In addition, in those cases addressing the harshness of the consequences for an offense, the courts appeared to have agreed that students with disabilities were entitled to less harsh consequences than their non-disabled counterparts for the same offenses.

In summary of the cases reviewed for use in this study, the courts found for the students with disabilities in 79% of the cases and found for the students without disabilities in 6% of the cases. Of the thirty-four cases addressing the rights of students without disabilities, the courts found in favor of the students in three of the cases, or 8.8% of the time. One of the three cases decided in the non-disabled students' favor occurred in each of the 6th, 7th and 8th Circuits. Thirty-one cases, or 91.2% of the cases involving students without disabilities, were decided in favor of the schools.

An overview of the cases reviewed for this study indicates that 46% of the cases heard by courts at the appellate level were heard by courts in three of the thirteen Federal Judicial Circuits. These three circuits were the 6th Circuit with fifteen cases, the 7th Circuit with sixteen cases and the 8th Circuit with nine cases. These three circuits consist of most of the Midwestern states.

Of these forty-five cases, eleven were brought forth on behalf of students with disabilities and thirty-four were brought forth on behalf of students without disabilities. Of those brought on behalf of students with disabilities, the courts ruled in favor of the students in eight of the eleven cases, or 72.7% of the time. The three cases in which the courts ruled in favor of the schools, and against the students with disabilities, were all decided in the 7th Circuit.

When interviewing authorities in the area of law and education, it was noted that those involved in school site interactions with students seemed to be knowledgeable of the legislation passed with regard to students with and without disabilities. It was apparent however, that there was some sense of frustration with the inconsistencies in the disciplining of the various populations of students. Those authorities in the area of law worded their answers to reflect their knowledge of education legislation but expressed a somewhat resigned view of the abilities of schools to render discipline equally to both students with disabilities and those without. Interviews with state Department of Education officials were, for the most part, noncommittal in all areas.

The teacher survey distributed to secondary public school teachers by this researcher prior to the reauthorization of IDEA in late 2004, asked fourteen questions concerning school safety and the discipline of students with disabilities and those without. Results were tabulated based on an “agree” or “disagree” response, with the responses of “strongly agree” and “strongly disagree” being discarded.

The data showed that 70% of the teachers surveyed do not feel safe at school, while over 80% do not feel that current laws adequately protect them from physical harm by students. This is further emphasized by the feeling of almost 60% of the teachers surveyed who believe that “zero tolerance” laws do not increase feelings of safety on school campuses. Teachers surveyed believe that students with disabilities are more aware of their legal rights than those students without disabilities. 57% of the teachers felt that those handling discipline matters at the school level are not thoroughly familiar with laws regarding students with disabilities. 75% of the teachers surveyed believe that

students with disabilities are provided preferential treatment with regard to disciplinary actions and 76% feel that students with disabilities are afforded more due process than their non-disabled peers.

In the areas of student awareness, teachers feel strongly (78.5%) that students with disabilities are aware of their legal rights with regard to discipline while only 46.5% feel that students without disabilities are aware of those same rights. Teachers themselves (66.5%) are unaware that they have the right to remove permanently a disruptive student from their classrooms. 57% of the teachers surveyed also feel that those handling discipline matters at the school level are not thoroughly familiar with laws regarding students with disabilities. Finally, teachers feel strongly (83.5%) that students with disabilities and those without disabilities do not receive the same treatment when they violate a school rule, but that those students with disabilities are provided differential treatment with regard to disciplinary actions (74.5%). 60% of those teachers surveyed feel that regardless of whether a behavior is part of a student's disability, the student should be disciplined in the same manner as a non-disabled peer, and 75.5% feel that students with disabilities are afforded more due process than their non-disabled peers when involved in discipline matters.

Answers to the research questions asked in this study are summarized as follows:

1. What is the standing of legislation regarding the differential discipline of students with disabilities as compared with the non-disabled students?

Legislation has been passed in an attempt to equalize the opportunity for a free and appropriate public education (FAPE) among all subpopulations of students. This

legislation has resulted in differential treatment for those students with disabilities in the area of discipline. The legislation actually addresses discipline and promotes this differential treatment.

2. What is the standing of the courts' decisions regarding the differential discipline of students with disabilities as compared with the non-disabled students?

Appellate court decisions indicate an overwhelming support of differential treatment for students with disabilities, finding for those students in 79% of the cases reviewed for this study. Of the cases involving students without disabilities reviewed for this study, the courts found for these students in only 6% of the cases.

3. What are the consistencies and inconsistencies in the treatment of students with disabilities as compared with non-disabled students?

The consistencies in the treatment of students with disabilities and those without disabilities include compliance with a common "code of student conduct" at the school level, a requirement for due process, and the ability to pursue criminal charges for an illegal act on school campus. The inconsistencies at the school level include dual levels of consequences for students with disabilities and those without disabilities. Students with disabilities are entitled to more due process than other students, are provided with a continuation of services when they are suspended from school for more than ten days per school year, and are entitled to remain in class with no consequences at all if it is determined that the violation was a manifestation of the student's disability. Students without disabilities are not entitled to any of the above treatment.

4. Do legislation and court decisions appear to foster differential treatment of certain populations of students in school?

Legislation certainly appears to foster differential treatment of students with disabilities in school. IDEA (1997, 2004) has had an enormous impact on the way students with disabilities are treated in school. There are entire teams on staff at schools to ensure that these students' rights are not violated and that every aspect of their education is in compliance. Court decisions set precedents for future cases and districts will do whatever is necessary to avoid going to court over the violation of the rights of a student with a disability. By virtue of their decisions, courts are encouraging this differential treatment in schools.

5. To what degree do legislation and court decisions appear to impact differential treatment of students in school settings?

Legislation ties its mandates to funding, thus requiring schools to comply or lose massive amounts of funding. Schools cannot afford to lose these valuable dollars so they comply, even though it is detrimental in some cases to the day to day operation of the school. Schools are instructed by the district to ensure that no rights of students with disabilities are violated, thus encouraging differential treatment at the school level.

Students with disabilities and students without disabilities are afforded varying amounts of due process at the school level. Quite often, these students are disciplined differently when violating a school policy or rule. In some instances, students without disabilities are suspended or expelled for a violation while students with disabilities

remain in school for committing the same offense. The courts encourage this differential treatment by their findings in these cases.

6. How does the law impact the behavior and discipline of students with disabilities?

The law has a negative impact on the behavior and discipline of students with disabilities. Results of this study show that students are aware of their legal rights and that this knowledge empowers them in some instances to commit offenses because they know they are immune from consequences. According to interviews with experts in the field of education, behavior of some of these students has deteriorated due to their lack of responsibility for their actions.

Schools find their hands tied with regard to the discipline actions they can take involving students with disabilities. They must make sure that the extended rights of these students are not violated, while at the same time ensuring a safe and orderly environment on campus.

7. Is there a relationship among the various judicial districts of the United States and the rulings they hand down with reference to students with disabilities and discipline issues?

The three Federal Judicial Circuits encompassing the Midwestern states, the 6th, 7th, and 8th, heard 46% of the cases reviewed for this study. The Midwestern circuits ruled in favor of the students with disabilities in 73% of the cases brought before them. All of the cases in which rulings were for the schools and not the students with disabilities occurred in the 7th circuit. In the 3rd, 5th, and 11th circuits, 100% of the findings in cases

involving students with disabilities were for the students, while 100% of the findings in cases involving students without disabilities were against the students. The 8th and 9th circuits followed closely behind with 90% rate for students with disabilities and a 10% rate for those without disabilities.

Conclusions

Based upon the findings of this study, my conclusions are that laws enacted to protect the rights of students with disabilities in educational arenas have, in fact, progressed to the point of obvious disparagement in treatment for students without disabilities with regard to disciplinary issues. Distinct differential treatment appears to be afforded students with disabilities as reflected by the court cases reviewed, the interviews with leading authorities in the areas of law and education, and as indicated on the teacher surveys regarding safety and school discipline of students with and without disabilities. According to my survey, a majority of teachers feel unsafe when at work and, at times, even fear their students, knowing that they have little or no control over the actions of some students. Noguera, in *Taking Sides* (2001) states

Order and safety are essential requisites to an environment where teaching and learning can occur.... Many teachers begin to fear the children they teach because to some they seem to embody the less than-civilized images...Fear invariably influences interaction between teachers/administrators and students. Though it may never be stated, students often can tell when adults fear them, and many will use this to undermine their teachers' authority in the classroom or elsewhere at school....Students who know their teachers fear them are less likely to show respect and more likely to be insolent and insubordinate. When fear is at the center of student-teacher interactions, good teaching becomes almost impossible, and concerns about safety and control take precedence over concerns about teaching and learning (p. 323).

He continues, “So many schools are preoccupied with controlling their students or with ensuring safety that they have lost sight of the fact that schools are supposed to be centers of learning where children receive intellectual and psychological nurturing.” Unfortunately, schools must ensure a “safe environment, conducive to learning” and are governed by the various, and sometimes contradictory, statutes implemented to assure compliance. School officials are caught between an attempt to keep schools safe and an attempt to comply with federal and state mandates so as not to forfeit allocated funds.

Research of federal mandates and state statutes indicates that, because school compliance is directly tied to financial mandates, school-based personnel have little discretionary power when dealing with discipline of those students with disabilities. Compliance and funding audits are routinely conducted in public schools and, if schools are found to be out of compliance with federal mandates, funds can be withheld. “In times that are marked daily with tales of violence and danger in our public schools, we do society no favor by toying with the few tools of discipline left to school authorities” states Judge J. Norcott, Sup. Ct. of Conn., *P. Packer v. BOE of the Town of Thomaston* (1998).

Many teachers feel unsafe at schools and attribute that feeling to an inability to control the behavior of students in the classrooms. This inability stems from the inequities in consequences for serious discipline infractions by students with disabilities and those without disabilities; inequities that seem to have precedents set by the courts. In *Taking Sides* (2001, p. 312) Shanker expresses his belief that, “...there are ways of behaving in society that are unacceptable. And when we sit back and tolerate certain

types of behavior, we are teaching youngsters that certain types of behavior are acceptable...”

The Midwestern appellate circuit courts (6th, 7th, 8th) appear to hear the most cases concerning school discipline and follow the national trend of finding for students with disabilities and against students without disabilities. In finding for the school in a discipline case regarding a student without disabilities and a look-alike gun found in his car on a school campus, the court stated, “The public interest will be served if our children are allowed to attend safe schools-free from guns, disruption and profanity. The public interest will be served if school officials are permitted to regulate conduct which relates to school safety and discipline, to ensure the safety of the student body. School officials should be allowed to complete their duties free from abusive behavior and from threats of violence from students.” (*Turner v. South-Western City School Dist.*, 1999).

However, continuing to follow the judicial trend of interpreting educational laws in favor of students with disabilities, a court of appeals in Ohio ruled in favor of a student who might suffer from Attention Deficit Disorder (ADD), who was expelled for one year for having a loaded pistol in his gym bag. Between hearings, the parents asked for an ADD screening and protection under IDEA. Because of the parents’ request for IDEA protection, the expulsion was revoked and the child was returned to school. Although the screening never took place, the appellate court found that the trial court erred in not taking into consideration the student’s possible disability (*Hemberger v. LaBrae Board of Ed.*, 1997). In another case a student who was constantly disruptive and defiant was suspended and filed suit claiming that she was being deprived of FAPE. “Her claim is

quite simply that she is deprived of a public education if she is required to obey a school rule with which she does not agree” (*Teshana Byers et al. v. City for Waterbury et al.*, 2001). In *Why Can't They Just Behave: Disabilities Associated With School Disruption* (2000), Zimmerman states

It is important to recognize that even if a child has a disability we do that child a dreadful disservice if we excuse inappropriate behavior. Perhaps the greatest skill we can teach all children, including children with disabilities, is the skill of taking responsibility for their own behavior. If an individual does not take responsibility for his or her own behavior, someone else will (p. 3).

Implications

It is important to note that there were almost three times as many cases filed on behalf of students without disabilities as for those with disabilities. This might appear to indicate that parents of students without disabilities are looking for the same rights for their children as their peers who have a disability. The fact that there are fewer cases involving students with disabilities reaching the appellate court level recently may also indicate that most of the cases involving these students are being resolved at a lower level. This could be indicative of the school systems' reluctance to enter a costly legal battle when percentages appear to indicate that they would lose their case. “The fortunate among us continue to thrive within and around the existing education system, having learned how to use it, to bend its rules, and to sidestep its limitations. The well-to-do and powerful know how to coexist with the system, even to exploit it for the benefit of their children. They supplement it. They move in search of the best it has to offer. They pay for alternatives” (Bennett, et al, 2001, p. 173).

The results of this study further fortify the premise of inequities in education. Inequities are advocated by the issuance of various mandates and funding/compliance guidelines. These mandates and guidelines serve to strip the local school districts of the ability to maintain and self-regulate local schools.

Each additional program ordered by the District Court—and financed by the State--...makes the [local school district] more and more dependent on additional funding from the State. In turn, the greater the [district's] dependence on State funding, the greater its reliance on continued supervision by the District Court. This incentive effect runs counter to the 'vital national traditions' of autonomous local school districts and to the directive that a 'District Court' must strive to restore state and local authorities to the control of a school system operating in compliance with the Constitution (*NAACP, Ryer v. City of Yonkers & Yonkers B.O.E.*, 1999).

Implications for School Policy

In reflecting the position taken by many educators and parents, Shanker, in *Taking Sides* (2001), states

We must somehow come to grips with the idea that individuals have responsibility for their own actions. If we assume that society is to blame for all of the problems these young people have, may we then assume that society must develop solutions that take care of these young people's problems? We take away from each individual the responsibility for his or her own life. Once the individual assumes that he or she has lost control of his own destiny, that individual has no difficulty in justifying any act because he or she feels no responsibility for the consequences (p. 312).

The results of this study suggest the following implications for school policy changes:

1. Discipline plans for schools must address equitable methods for removing all disruptive and/or dangerous students from the classroom so as to ensure the orderliness and safety in the classroom.
2. Policymakers must work to ensure that all students have the same

opportunities to “Free and Appropriate Public Education (FAPE)” regardless of whether they have a disability or not.

3. The potential conflict between federal, state, and local mandates in relation to the distribution of educational funds and the maintenance of a zero tolerance school environment must be addressed with regard to the discipline of all students.

4. With the increasing shortage of teachers and administrators across the nation, policy must be implemented that will lessen teacher frustrations with discipline and improve their feelings of safety while at school.

Recommendations for Further Research

The following recommendations for further research were suggested by this study:

1. A longitudinal study should be undertaken to determine the effect of inequities in discipline on student achievement.

2. A study of educational policy making should be undertaken to ensure that future policies are not in conflict with the goals of public education.

3. A study of current federal and state laws should be undertaken to ensure conformity of purpose and equity when dealing with school safety and accessibility for students.

4. A study should be undertaken to determine the effect of judicial rulings and interpretations regarding school discipline on teacher and administrative shortages in public schools.

5. A study should be conducted to determine what, if any, influence the recent confirmations of John Roberts and Sam Alito to the U.S. Supreme Court will have on the interpretations of educational law in lower courts.

6. Since IDEA was reauthorized and changed in 2004, a survey should again be administered to public school teachers to determine their knowledge and feelings concerning current discipline and safety in schools.

References

- Adams, G.R., & Schvaneveldt, J.D. (1991). *Understanding research methods* (2nd ed.). White Plains, NY: Longman.
- Adler, L. (1997). *Complementary methods for examining legal issues in education: Qualitative research of legal cases* (Research That Makes A Difference, NOLPE Monograph No. 56). Fullerton, CA: California State University.
- Albert, E.M. (1988). *Great traditions in ethics* (6th ed.). Belmont, CA: Wadsworth Publishing Company.
- Alexander, K., & Alexander, M.D. (2001). *American public school law* (4th ed.). Belmont, CA: Wadsworth/Thomson Learning.
- Alexander, K., & Alexander, M.D. (2004). *American public school law* (5th ed.). St. Paul, MN: West Publishing Company.
- Alexander, K. & Alexander, M.D. (2006). *American public school law* (6th ed.). St. Paul, MN: West Publishing Company.
- Altheide, D.L., & Johnson, J.M. (1994). Criteria for assessing interpretive validity in qualitative research. In N.K. Denzin & Y.S. Lincoln (Eds.), *Handbook of qualitative research* (pp. 485-499). Thousand Oaks, CA: Sage.
- Ballantine, J.H., & Spade, J.Z. (Eds.). (2003). *Schools and society: A sociological approach to education* (2nd ed.). New York, NY: Wadsworth Publishing Company.
- Ballard, J., Ramirez, B.A., & Weintrub, F.J. (Eds.). (1982). *Special education in America: Its legal and governmental foundations*. Arlington, VA: Council for Children with Behavioral Disorders.
- Bartlett, L. (1989). Disciplining handicapped students: Legal issues in light of *Honig v. Doe*. *Exceptional Children*, 55, 357-366.
- Bell v. New Jersey*, 461 U.S. 773, 103 S.Ct. 2187, 26 L.Ed. 2d 312 (1983).
- Bennett deMarrais, K., & LeCompte M.D. (1998). *The way schools work* (3rd ed.). White Plains, NY: Longman.

Bennett, W. J., et al (2001). A nation still at risk. In James Wm. Noll (Ed.), *Taking sides* (11th ed.). Guilford, CT: Dushkin/McGraw-Hill.

Berube, M.R. (1994). *American school reform: Progressive, equity, and excellence movements, 1883-1993*. Westport, CT: Praeger.

Big Beaver Falls Area Sch. Dist. V. Jackson, 19 EHRLR 1019 (Pa. Commw. Ct. 1993).

Blackhurst, A.E., & Berdine, W.H. (Eds.).(1981). *An introduction to special education*. Boston, MA: Little, Brown & Co.

Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176,201.102 S.Ct. 3034, 3048 (1982).

Bolmeier, E.C.(1976). *Legality of student discipline practices*. Charlottesville, VA: The Michie Company.

Boyle, J.R., & Weishaar, M.(2001). *Special education law with cases*. Needham Heights, MA: Allyn & Bacon.

Brown v. Board of Education (Kan), 347 U.S. 483, 745 Ct. 686 (1954).

Charlotte County Public Schools. (2002). *Charlotte County public schools exceptional student education task force final reports 2001-2002*. Port Charlotte, FL.

Christian, J.L.(2005). *Philosophy: An introduction to the art of wondering*. New York, NY: Wadsworth Publishing.

Coleman, J.S., & Hoffer, T.(1987). *Public and private schools: The impact of communities*. New York, NY: Basic Books.

Commonwealth of VA DOE & U.S. DOW v. VA School Boards Assoc., 95-2627 86 F.3d 1337; 1996 U.S. App. LEXIS 14834.

Commonwealth of Virginia Department of Education v. Riley, 86 F.3d 1337; 1996 U.S. App. LEXIS 14834.

Consistencies. (2004). In *Merriam-Webster Collegiate Dictionary* (11th ed., p. 171). Springfield, MA: Merriam-Webster Incorporated.

Degler, C.N.(1984). *Out of our past: The forces that shaped modern America* (3rd ed.). New York, NY: Harper and Row.

Denson v. Benjamin 1999 Tenn. App. LEXIS 561 (Court of Appeals of Tenn., Middle Section, at Nashville (1999)).

Denzin, N.K. & Lincoln, Y.S. (Eds.). (2005). *Handbook of qualitative research* (3rd ed.). Thousand Oaks, CA: Sage Publications.

Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979).

Doe v. Maher, 793 F. 2d 1470 (9th Cir. 1986).

Doe v. Pulaski County Special School Dist., 306 F. 3d 616 (8th Cir. 2002).

Drew, C.J. (1976). *Introduction to designing research and evaluation*. St. Louis, MO: C.V. Mosby Company.

DuPree v. Alma School District No. 30 of Crawford County, 239 Ark. 340, 651 S.W.2d 90 (1983).

Durkheim, E. (1998). *Emile Durkheim: Selected writings*. New York, NY: University Press.

Duval County Public Schools. (2000). *Guidelines for discipline of students with disabilities*. Jacksonville, FL.

Education for All Handicapped Children Act, 20 U.S.C.A. §1401-1461,(1975). *Education of the Handicapped Act Amendments of 1986*, 20 U.S.C. 147 et seq and 1419 et seq.

Elliott, R. (1987). *Litigating intelligence: IQ tests, special education and social science in the courtroom*. Dover, MA: Auburn House Publishing Company.

Ertmer, P.A. (2004). *Practical research, planning and design*. Uppersaddle River, NJ: Merrill, an imprint of Prentice Hall.

Fairfield (TX) Ind. Sch. Dist, EHLR 352: 442 (OCR 1987).

Fischer, L., Schimmel, D., & Kelly, C. (2002). *Teachers and the law* (6th ed.). White Plains, NY: Longman Publishers, USA.

Flory v. Smith, 145 Va. 164,134 S.E. 360 (1926).

Friedman, L.M. (2005). *A History of American law* (3rd ed.). New York, NY: Touchstone.

- Gall, M.D., Borg, W.R., & Gall, J.P. (2006). *Educational research: An introduction* (8th ed.). White Plains, NY: Longman.
- Garrett, K.R. (1990). *Dialogues concerning the foundations of ethics*. Savage, MD: Rowman & Littlefield Publishers, Incorporated.
- Glazer, B., & Strauss, A. (1967). *The discovery of grounded theory: Strategies for qualitative research*. Chicago, IL: Aldine.
- Goss v. Lopez*, 419 U.S. 565, 572-76, 42 L. Ed. 2d 725, 95 S.Ct. 729 (1975).
- Good, C.V. (1972). *Essentials of educational research*. New York: Appleton-Century-Crofts.
- Guba, E. G., & Lincoln, Y.S. (1981). *Effective evaluations*. San Francisco, CA: Jossey-Bass.
- Hemberger v. LaBrae Board of Ed.*, 1997 Ohio App. LEXIS 5464 (Court of Appeals of Ohio, 11th app. Dist., Trumbull County).
- Handicapped Children's Protection Act of 1986*, 20 U.S.C. 1415 (e)(4).
- Henry, J. (2002). *The Scientific revolution and the origins of modern science*, (2nd ed.). New York, NY: St. Martin's Press, Incorporated.
- Hill, P.T. & Madey, D.L. (1983). *Educational policymaking through the civil justice system*. Santa Monica, CA: Rand Publications.
- Hillway, T. (1956) *Introduction to research*. Boston, MA: Houghton Mifflin.
- Holsti, O.R.(1969). *Content analysis for the social sciences and humanities*. Reading, MA: Random House.
- Hume, M. (1987). *A Mandate to educate: The law and handicapped children*. Alexandria, VA: Capitol Publications, Incorporated.
- Honig v. Doe*, 484 U.S. 305, 108 S.Ct. 592 (1988).
- <http://www.dictionary.law.com>
- http://www.dpa.org.sg/DPA/definition_disability.htm
- <http://www.jurist.law.pitt.edu/paperchase/2006>
<http://www.law.com/jsp/article.jsp?id=1046288236052>

<http://www.scotusblog.com/movabletype/archives/2005/10/alito.html>

<http://www.whitehouse.gov/infocus/judicialnaominees/roberts.html>

Jenks, C. (April, 1988). Whom must we treat equally for education opportunity to be equal? *Ethics*, 98, 518-533.

Johnson, T.P. (1986). *Principal's guide to the educational rights of handicapped students*. Reston, VA: National Association of Secondary School Principals.

July, R. (1998). Teaching students how to learn in a constructivist classroom. *FASCD policy review*, 7(1), pp. 27-31.

Inconsistent. (2004). In *Merriam-Webster Collegiate Dictionary* (11th ed., p. 171). Springfield, MA: Merriam-Webster Incorporated.

Kelman, M, & Lester, G. (1998). *Jumping the queue*. Cambridge, MA: Harvard University Press.

Knox County Schools v. Chris L., 1997 U.S. App. LEXIS 1041.

Kyle P. Packer v. BOE of the Town of Thomaston 246 Conn. 89; 717A. 2d 117; 1998 Conn. LEXIS 297.

L'Abate, L., & Curtis, L. (1975). *Teaching the exceptional child*. Philadelphia, PA: W. B. Saunders Company.

Lau v. Nichols, 414 U.S. 563, 94 S. Ct. 786 (1974).

Levine, D.U. & Levine, R.F. (1995). *Society and education*, (9th ed.). Needham Heights, MA: Allyn & Bacon.

M.G. v. Independent Sch. Dist. No. 11 of Tulsa County Oklahoma, 2000 U.S. Dist. LEXIS 12197.

McLaren, P. (2002). *Life in schools: An introduction to critical pedagogy in the foundations of education*, (4th ed.). New York, NY: Longman.

Maloney, M.H. (1998). Discipline and the reauthorized IDEA: Professional challenges and client concerns. *School law in review*, 8-1—8-10.

Mead, W.B. (1987) *The U.S. Constitution: Personalities, principles, and issues*. (1st ed.). Columbia, S.C.: University of South Carolina Press.

Menacker, J. (1987). *School law: Theoretical and case perspectives*. Uppersaddle River, NJ: Merrill, an imprint of Prentice Hall.

Merriam, S.B. (1991). *Case study research in education: A qualitative approach*. San Francisco, CA: Jossey-Bass.

Mills v. Board of Education of District of Columbia, U.S. Dis. Ct., District of Columbia,. 348 F.Supp. 866 (1972).

Murray, B.A., & Myers, M.A. (January, 1998). Avoiding the special education trap for conduct disordered students. *NASSP bulletin*, 82(594), 65-73.

NAACP Ryer v. City of Yonkers & Yonkers BOE, U.S. Court of Appeals for 2nd Circuit 197 F.3d 41; 1999 U.S. App. LEXIS 29893 Nov. 16, 99- Decided.

Nevins, A. (1938). *The gateway to history*. New York, NY: Appleton-Century.
Noguera, P.A. (2001). Does school violence warrant a zero-tolerance policy? In James Wm. Noll (Ed.), *Taking sides* (11th ed.). Guilford, CT: Dushkin/McGraw-Hill.

Olson, J., & Platt, J. (2003). *Children & adolescents with special needs*, (4th ed.). New York, NY: MacMillan.

Osborne, A.G. & Russo, C.J. (2003). *Special education and the law: A guide for practioners*. Thousand Oaks, CA : Corwin Press.

Pennsylvania Association of Retarded Citizens (PARC) v. Commonwealth, 334 F.Supp. 1257 (E.D.Pa.1971), 343 F.Supp. 279 (E.D.Pa.1972).

Perkins Act, 1984, 20 U.S.C. §2301, 2332-34.

Pitt, D.C. (1985). *Using historical sources in anthropology and sociology*. New York, NY: Reinhart and Winston Irvington Publishers.

Plyer v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L.Ed. 2d 786 (1982).

Rawls, J. (1971). *A theory of justice*. Cambridge, MA: Belknap Press of Harvard University Press.

Reams, Jr., B.D.(Ed.). (1975). *Segregation and the Fourteenth Amendment in the states: A survey of state segregation laws 1865-1953; Prepared for United States Supreme Court in re: Brown vs. Board of Education of Topeka*. Buffalo, NY: Wm. S. Kein & Co., Inc.

Rehabilitation Act of 1973(Section 504) 29 U.S.C. §794.

Revelation. (2002). In *Merriam-Webster's Third New International Dictionary* (p.1492). Springfield, MA: Merriam-Webster Incorporated.

Rothstein, L.F. (1990). *History of special education law*. White Plains, NY: Longman.

S-i v. Turlington, 635 F. 2d 342 (5th Cir. 1981), cert. denied 454 U.S. 1030, 102 S. Ct. 566 (1981).

San Antonio Dist. V. Rodriguez, 411 U.S. 1, 93 S. Ct. 1278, 36 L.Ed. 2d 16 (1973).

Shanker, A.(2001). Does school violence warrant a zero-tolerance policy? In James Wm. Noll (Ed.), *Taking sides* (11th ed.). Guilford, CT: Dushkin/McGraw-Hill.

Shipman, M.D.(1975). *The sociology of the school*. New York, NY: Humanities Press.

Spring, J.(2005). *American education: An introduction to social and political aspects*,(12th ed.). New York, NY: Longman.

Spring, J.(2004). *Conflicts of interests: The politics of American education*, (5th ed.). New York, NY: McGraw-Hill.

Spring, J.(2003). *Deculturalization and the struggle for equality: A brief history of the education f dominated cultures in the United States*, (4th ed.). New York, NY: McGraw-Hill.

State ex rel. Beattie v. Board of Education, 169 Wis. 231, 172 N.W. 153 (1919).

Stein, S. J. (2004). *The Culture of education policy*. New York, NY: Teachers College Press.

Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978).

Teshana Byers et. al. v. City of Waterbury et al., 47 Conn. Supp. 342; 795 A.2d 630; 2001 Conn. Supper. LEXIS 3313.

Texas City Independent School District v. Jorstad, 752 F. Supp. 231 (S.D. Tex. 1990).

Tinker v. Des Moines Community School Dist., 393 U.S. 503, 89 S. Ct. 733, 21 L.Ed. 2d 733 (1969).

Turner v. South-Western City School Dist. 82F. Supp. 2d 757; 1999 U.S. Dist. LEXIS 20680 (U.S. Dist. Ct. for the Southern District of Ohio, Eastern Div. 1999).

Tushnet, M. (1988). The politics of equality in constitutional law: The equal protection clause, Dr. DuBois, and Charles Hamilton Houston. In D. Thelen (Ed.), *The Constitution and American life*, (pp. 224-234). Ithica, NY: Cornell University Press.

Underwood, J.K. & Mead, J.F. (1995). *Legal aspects of special education and pupil services*. Needham Heights, MA: Allyn & Bacon.

Wolcott, H. (1988). Ethnographic research in education. In R.M. Jaeger (Ed.), *Complementary methods: For research in education* (pp. 188-249). Washington, DC: American Education Research Association.

Yick Wo v. Hopkins, 118 U.S. 356, 373-374 (1886).

Ysseldyke, J. E., Algozzine, B., & Thurlow, M. L. (2000). *Critical issues in special education*. Boston, MA: Houghton Mifflin.

Zimmerman, B.F. (2000). [Why Can't They Just Behave: Disabilities Associated With School Disruption]. Unpublished .

Bibliography

2006 Deskbook encyclopedia of American School Law. Malvern, PA: Center of Education and Employment Law.

Abrenski v. Southeastern Sch. Dist. 421 A.2d 485 (Pa.Commonw. 1980).

Adler, P. A., & Adler, P. (1994). Observational techniques. In N.K. Denzin & Y.S. Lincoln (Eds.), *Handbook of qualitative research* (pp. 377-392). Thousand Oaks, CA: Sage.

Alexander, L. & Horton, P. (1988). *Who does the Constitution Command?* New York, NY: Greenwood Press.

Amy M. v. Timberlane Regional School Dist., 2000 DNH 181; 2000 U.S. Dist. LEXIS 20937.

Andrea N. Sanders Nicol, v. Auburn-Washburn USD 437, et al., Defendants., 231 F. Supp. 2d 1107; 2002 U.S. Dist. Lexis 21947.

Archer, M.S. (1984). *Social Origins of Educational Systems*. London, England: Sage Publications.

Alexander, K., & Alexander, M. D. (1992). *American Public School Law* (3rd ed.). St. Paul, MN: West Publishing Company.

Ary, D., Jacobs, L.C. & Razavieh, A. (2005). *Introduction to Research in Education* (7th ed.). Belmont, CA: Wadsworth/Thomson Learning.

Avery, G. (2002). *Safety, order and discipline in American schools*. Cleveland, OH: Law Advisory Group, Inc.

Bercovitch, v. Baldwin Sch., No. 97-1739, 1998; U.S. App. Lexis 537; January 12, 1998, decided.

Binion v. Community High School Dis. 218, 1998 U.S. Dist. LEXIS 7560.

Blyth, E., & Milner, J. (Eds.). (1996). *Exclusion from school: Inter-professional issues for policy and practice*. New York, NY: Routledge.

Bd. Of Ed. Of Covington Cty. Miss v. G.W., 767 So. 2d 187; 2000 Miss. LEXIS 182.

Board of Ed. Of Monticello Sch. Dist. V. Herzog, 91 N.Y. 2d 133; 690 N.E. 2d 480; 667 N.Y.S. 2d 671; 1997 NY. LEXIS 3698.

Board of Education, v. Patrick M., No. 98-3848, 2000 U.S. App. Lexis 11869, May 24, 2000, filed.

Bolmeier, E.C. (1973). *Landmark Supreme Court Decisions on Public School Issues*. Charlottesville, VA: The Michie Company.

Board of Education of Jefferson County School District R-1, v. Wilder., 97sc292, (Col. 1998).

Bricker, D.C. (1989). *Classroom life as civic education: Individual achievement and student cooperation in schools*. New York, NY: Teachers College Press.

Broad, C.D. (2000). *Five types of ethical theory*. London, England: Routledge & Kegan Paul Limited.

Bruck, L. (1978). *Access*. New York, NY: Random House.

Bulmer, M. (Ed.). (1977). *Sociological research methods-An introduction*. London, England: The MacMillian Press Limited.

Busch v. Omaha Public School District, 261 Neb. 484; 623 N.W. 2d 672; 2001 Neb. LEXIS 64.

Butler, v. Oak Creek-Franklin Sch. Dist., Case No. 00-C-1298, 2000 U.S. Dist. Lexis 16193, October 13, 2000, decided.

Cambron-McCabe, N.H. & McCarthy, M.N. (2003). *Public school law: Teachers' and students' rights*, (5th ed.). Boston, MA: Allyn & Bacon.

Castaneda v. Pickard, 648 F. 2d 989 (5th Cir. 1989).

Caston v. Benton Public Schools, 2002 U.S. Dist. LEXIS 11299.

Cathe A., v. Doddridge county Board of Education, Ronald K. Nichols, Superintendent; and William J. Curran, Martha M. Devericks, James J. Dukate, Clifford L. Willis and Monzel Rex Zickefoose, individually and as a member of the Doddridge County Board of Education, 200 W. Va. 521; 490 S.E.2d 340; 1997 W. Va. Lexis 129.

C.S., v. Shoreline School District., 220 F. Supp. 2d 1175; 2002 U.S. Dist. Lexis 19049.

Chen Yun Gao, v. Ashcroft ., 299 F.3d 266; 2002 U.S. App. Lexis 15910, May 20, 2002, Argued, August 7, 2002, Filed, as amended August 30, 2002.

Cohen, M.L., Berring, R.C., & Olson, K.C. (1992). *Finding the law*. Minneapolis, MN: West Publishing Company.

Colker, R. & Tucker, B.P. (1999). *The law of disability discrimination handbook*, (2nd ed.). Cincinnati, OH: Anderson Publishing Company.

Colvin ex rel. Colvin, v. Lownds County., Civil Action No. 1:99CV306-D-D, 2000 U.S. Dist. Lexis 2403, February 24, 2000, decided.

Commonwealth of VA DOE & U.S. DOW v. VA School Boards Assoc., 95-2627 86 F.3d 1337; 1996 U.S. App. LEXIS 14834.

Coy, v. Bd. Of Educ., Case No. 4:01-CV-1812, 2002 U.S. Dist. Lexis 7713, April 29, 2002, decided.

Creswell, J. W. (1994). *Research designs: Qualitative and quantitative approaches*. Thousand Oaks, CA: Sage.

C.T. v. Lewiston School Committee., 2000 U.S. Dist. Lexis 10674.

Demers, v. Leominster Sch. Dep't., 2003 U.S. Dist. Lexis 8278, May 13, 2003 , decided.

D.G. and C., v. Independent School District Number 11 of Tulsa County Oklahoma, Defendant., 200 U.S. Dist. Lexis 121197.

Doe, v. Brownsburg Community Sch. Corp., Cause No. Ip00-0080-C-T/G, 2000 U.S. Dist. Lexis 12789, August 31, 2000, decided.

Doe v. Supr. of Schools of Stoughten, 437 Mass. 1; 767 N.E. 2d 1054; 2002 Mass. LEXIS 298.

Dohmen, v. Twin Rivers Pub. Sch., 207 F. Supp. 2d 972; 2002 U.S. Dist. Lexis 11861, June 14, 2002, decided.

Earls by Earls, v. Board of Education., Case No. CIV-99-1213-R, 2000 U.S. Dist. Lexis 12036, March 9, 2000, decided.

Editors of the Columbia Law Review, the Harvard Law Review, the University of Pennsylvania Law Review, & The Yale Law Journal. (Eds.). (2005). *The bluebook: A uniform system of citation* (18th ed.). Cambridge, MA: The Harvard Law Review Association.

Elias, S. & Levinkind, S. (2005). *How to find and understand the law*, (13th ed.). Berkeley, CA: NOLO.

Ely, M. et al. (1991). *Doing qualitative research: Circles within circles*. Bristol, PA: Falmer Press.

Escatel, v. Atherton., No. 96 C 8589, 2001 U.S. Dist. Lexis 9212, June 29, 2001, decided.

Feinberg, B.S. (1999). *The dictionary of the U.S. Constitution* (1999). New York, NY: Grolier Publishing.

Fine, M. (1994). Working the hyphens: Reinventing self and other in qualitative research. In N.K. Denzin & Y.S. Lincoln (Eds.), *Handbook of qualitative research* (pp. 70-82). Thousand Oaks, CA: Sage.

Flinders, D.J. & Mills, G.E. (Eds.). *Theory and concepts in qualitative research: Perspectives from the field*. New York, NY: Teachers College Press.

Florida Department of Education and Lexis Nexis, (2005). *Florida school laws*. Charlottesville, VA: Matthew Bender & Company, Inc.

Fortman v. Texarkana School Dist. No. 7, 514 S.W. 2d 720 (Ark. 1974).

Freiberg, K.L. (Ed.). (1995). *Educating exceptional children*. Guilford, CT: Dushkin Publishing.

Fuller, v. Decatur Public School Board of Education Dist. 61., Case No. 99-CV-2277.

Glesne, C., & Peshkin, A. (1992). *Becoming qualitative researchers: An introduction*. White Plains, NY: Longman.

Gong Lum v. Rice, U.S. 78 (1927).

Green v. Moore, 373 F. Supp. 1194 (N.D. Tex. 1974).

Hammock v. Keys, et. al., 2001 U.S. Dist. LEXIS 1185.

Handicapped Children's Protection Act of 1986, 20 U.S.C. § 1415 (e)(4).

Harry, B., Allen, N. & McLaughlin, M. Communication versus compliance: African-American parents involvement in special education. *Exceptional Children*, 61, 364-377.

Herzog, v. George Will., 931 F. Supp. 276; 1996 U.S. Dist. Lexis 10688.

Herrmann, v. Board of Education of Unified School District No. 256., 2002 U.S. Dist. Lexis 21700, October 16, 2002, decided.

Hillway, T. (1964). *Introduction to research*, (2nd ed.). Cambridge, MA: The Riverside Press.

<http://jurist.law.pitt.edu/paperchase/2006/01/bush-defends-surveillance-celebrates.php>

Howe, K.R. & Miramontes, O.B. (1992). *The ethics of special education*. New York, NY: Teachers College Press.

Hutchinson, S. (1988). Education and grounded theory. In R.R. Sherman & R. B. Webb (Eds.), *Qualitative research in education: Focus and methods* (pp. 123-140). London: Falmer Press.

Ianson v. Zion-Benton Twp. High School, 2001 U.S. Dist. LEXIS 1931.

Independent School Dist. No. 284, v. A.C., No. 00-35303, 258 F.3d 769; 2001 U.S. App. Lexis 17263 (filed August 3, 2001).

J., v. Board of Education., Case No. 3:98CV1502, 2000 U.S. Dist. Lexis 7714, March 14, 2000, decided.

Jerrod Anders, v. Fort Wayne Community Schools., 124 F. Supp. 2d 618; 2000 U.S. Dist. Lexis 18492.

J.M., v. Webster County Bd. Of Educ., No. 26904, 207 W. Va. 496; 534 S.E.2d 50; 2000 W. Va. Lexis 66, July 10, 2000, filed.

John and Jane Doe, v. The Pulaski County Special School District., 2000 U.S. Dist. Lexis 21406.

Johns, B.H., Carr, V.G., & Hoots, C.W. (2005). *Reduction of school violence: Alternatives to suspension*, (3rd ed.). Horsham, PA: LRP Publications.

J.S., v. Bethlehem Area Sch. Dist., No. 2259 C.D. 1999,757 A.2d 412; 2000 Pa. Commw. Lexis 23, January 22, 2001, decided.

K.F., v. River Bend Cmty. Unit Sch. Dist.No. 2., 2002 U.S. Dist.Lexis 12468, July 8, 2002, decided.

Kumar, R. (2005). *Research methodology*, (2nd ed.). Thousand Oaks, CA: Sage Publications.

Lampkin v. District of Colombia, 3d 605 (D.C. Cir. 1994).

Latham, P.S. & Latham, P.H. (2000). *Learning disabilities and the law*, (2nd ed.). Washington, D.C.: JKL Communications.

Lau v. Nichols Bilingual Education in Public Schools. Landmark Supreme Court Cases (2000). Stephanie Sammartino McPherson: Berkeley Heights, NJ: Enslow Publisher, Inc.

Lavine v. Blaine Sch. Dist., No. 00-35303 (U.S. filed July 20, 2001).

LeCompte, M. D., & Preissle, J. (1993). *Ethnography and qualitative design in educational research* (2nd ed.). New York: Academic Press.

Lincoln, Y. S. (1995, April). *Standards for qualitative inquiry*. Paper presented at the annual meeting of the American Educational Research Association, San Francisco.

Little Rock School District., v. Pulaski County Special School Dist., 237 F. Supp.2d 988; 2002 U.S. Dist. Lexis 17677, September 13, 2002, decided.

Locke, L.F., Spirduso, W.W. & Silverman, S.J. (2000). *Proposals that work*, (4th ed.). Newbury Park, CA: Sage Publications.

M.G. v. Independent Sch. Dist. No. 11 of Tulsa County Oklahoma, 2000 U.S. Dist. LEXIS 12197.

M.M. v. Chesapeake City School Board, 52 Va. Cir. 356; 2000 Va.Cir. LEXIS 292.

McCarthy, M.M., Canbron-McCabe, N.H. & Thomas, S.B. (1998). *Public school law: Teachers' and students' rights*, (4th ed.). Boston, MA: Allyn & Bacon.

McMillan, J. H., & Schumacher, S. (1993). *Research in education: A conceptual understanding*. New York: Harper Collins.

Maricus W., v. Lanett City Bd. Of Educ., Civil Action 00-D-648-E, 141 F. Supp. 2d 1064' 2001 U.S. Dist Lexis 6228, April 3, 2001, decided.

Martin, R. (1991). *Extraordinary children; Ordinary lives*. Champaign, IL: Research Press.

Marner v. Eufaula City School Board, 2002 U.S. Dist. LEXIS 10200.

Marshall, C. & Rossman, G.B. (1998). *Designing qualitative research*, (3rd ed.). Thousand Oaks, CA: Sage Publications.

Maurer, R.E. (1988). *Educator's discipline handbook*. West Nyack, NY: Center for Applied Research in Education.

Maxwell, J.A. (2004). *Qualitative research design: An interactive approach*, (2nd ed.). Thousand Oaks, CA: Sage Publications.

Megan Wagner, v. Fort Wayne Community Schools, Kenneth Howe, and Joyce Turner, Defendants., 2003 U.S. Dist. Lexis 5624.

Meloy, J. M. (1994). *Writing the qualitative dissertation: Understanding by doing*. Hillsdale, NJ: Erlbaum.

Metropolitan School District v. Davila, 969 F. 2d 485,493 (7th Cir. 1992).

Michael Demars, v. Leominster School Department, Dr. Joseph Rappa, in his capacity as Superintendent of Schools, Judith P. Mulkern, in her capacity as Principal of Northwest School, and Susan Hitchcock, in her capacity as Pupil Personnel Director, Defendants., 2003 U.S. Dist. Lexis 8278.

Milken v. Green, 390 Mich. 389, 212 N.W. 2d 711 (1973).

Morris, D. (1994). *Guidelines for writing a qualitative research report*. Chicago, IL: American Marketing Association.

Morse, J. M., & Field, P. A. (1995). *Qualitative research methods*. Thousand Oaks, CA: Sage.

Noll, J.W. (2005). *Taking sides: Clashing views on controversial educational issues*, (13th ed.). Guilford, CT: Dushkin/ McGraw-Hill.

O.F. v. Chester Uplands School District, U.S. Dist. Court for the Eastern Dist. Of Penn., No. 00-779 (2002).

Ogbu, J.U. (1987). *Variability in minority school performance: A problem in search of an explanation*. *Anthropology and Education Quarterly*, 18, 312-335.

O'Hayre, v. Board of Education., Civil Action No. 99-269-B, 2000 DNH 181; 2000 U.S. Dist. Lexis 12194, August 17, 2000 decided.

Oltheide, D.L. & Johnson, J.M. (2005). Criteria for assessing interpretive validity in qualitative research. In N.K. Denzin & Y.S. Lincoln (Eds.), *Handbook of qualitative research*, (3rd ed.). Thousand Oaks, CA: Sage.

Osborne, A.G. (1992). Legal standards for an appropriate education in the post-Rowley era. *Exceptional Children*, 58, 488-493.

Packer, v. Board of Education., 246 Conn. 89; 717 a.2d 117; 1998 Conn. Lexis 297, August 4, 1998, released.

Pangle, v. Bend-Lapine Sch. Dist., CA A100163,169 Ore. App. 376; 10 P.3d 275; 2000 Ore. App. Lexis 1414, August 30, 2000, filed.

Patton, M.Q. (2001). *Qualitative evaluation and research methods*, (3rd ed.). Newbury Park, CA: Sage.

People in Interest of K.P., 514 P. 2d 1131 (Colo. 1973).

People, v. Morgan., 758 N.E.2d 813; 2001 III. Lexis 1428; 259 III. Dec. 405.

Peshkin, A. (1988). Understanding complexity: A gift of qualitative research. *Anthropology and Education Quarterly*, 19, 416-424.

Petry v. Flaughner, 505 F. Supp. 1087 (E.D. Ky. 1981).

Philadelfio C. Armijo, v. Wagon Mound Public Schools., 159 F.3d 1253; 1998 U.S. App. Lexis 27608.

Pittman, P. & Huefner, D.S. (2001). Will the courts go bi-bi? IDEA 1997, the courts, and deaf education. *The Council for Exceptional Children*, 67(2) pp. 187-198.

Preissle (Eds.), *The handbook of qualitative research in education* (pp. 597-642). San Diego, CA: Academic Press.

Pupil services. Needham Heights, MA: Allyn & Bacon.

R.B. v. Hindsdale Township High School Dist. 86, 1998 U.S. Dist. LEXIS 4198.

Radest, H.B. (1989). *Can we teach ethics?* New York, NY: Praeger.

Rakove, J.N. (1997). *Original meanings*. New York, NY: Vintage Books.

Rapp, D. J. (1989). *The impossible child*, (2nd ed.). Buffalo, NY: Practical Allergy Research Foundation.

Reene D. Rippy and Christopher Marlor, v. Board of School Trustees, Mooresville Consolidated School Co., 2000 U.S. Dist. Lexis 7427.

Richardson, L. (1992). The consequences of poetic representation: Writing the other, rewriting the self. In C. Ellis & M.G. Flaherty (Eds.), *Investigating subjectivity: Research on lived experience* (pp. 125-140). Newbury Park, CA: Sage.

Richland School Dist. V. Thomas P., 2000 U.S. Dist. LEXIS 15162.

Riggan, v. Midland Indep. Sch. Dist., 2000 Dist. Lexis 2639, February 23, 2000, decided.

Roventini v. Pasadena Indep. School District., h-96-3945, (S.D. Tex. 1997).

Rumaldo Escatel, v. Robert Atherton, Christine Benson, Andrew Wujek Joan Schmidt, Carol Ramer, John Hartt, Herman Kreiling, Dan Shirey, Michael Vercimak and Mendota Township High School District no. 280., 2001 U.S. Dist. Lexis 9212.

Sage, D.D. & Burrello, L.C. (1988). *Public policy and management in special education*. Englewood Cliffs, NJ: Prentice-Hall.

Saxe, v. State College Area Sch. Dist., No. 99-4081, United State Court of Appeals for the Third Circuit, 240 F.3d 200; 2001 U.S. App. Lexis 2179 (filed February 14, 2001).

School District of Wisconsin Dell, v. ZS. 7th U.S. Circuit Court of Appeals, No. 01-3720 (2002).

School safety sourcebook: Data, initiatives and legislation; including data and initiatives from the 1994-95 school year and relevant legislation passed by the Florida legislature in 1996 (1997). Tallahassee, FL: Florida Dep't of Education, Division of Public Schools, Bureau of Instructional Support and Community Services. (Schwandt, Winter, 1998).

Schrader, v. Board of Education of the Taconic Hills Cent. Sch. Dist., 80810, (N.Y. App. Div. 1998).

Schwandt, T.A. (1998). The interpretive review of educational matters: Is there any other kind? *Review of educational research*, 68(4), pp. 409-412.

Shapiro, J.P. & Stefkovich, J.A. (2000). *Ethical leadership and decision making in education: Applying theoretical perspectives to complex dilemmas*. Mahwah, N.J.: Lawrence Erlbaum Associates.

Schwandt, T. A. (Winter, 1998). The interpretive review of educational matters: Is there any other kind? *Review of Educational Research*, 68(4), 409-412.

Seidman, I. E. (1991). *Interviewing as qualitative research*. New York: Teachers College Press.

Shils, E. (1984). *The Academic ethic*. Chicago, IL: University of Chicago Press.

Skrtic, T. M. (Ed.). (1995). *Disability and democracy: Reconstructing (special) education for post modernity*. New York: Teachers College Press.

Smith M.L. (1987). Publishing qualitative research. *American Educational Research Journal*, 24, 173-183.

Spencer v. Omaha Public School District, 252 Neb. 750; 566 N.W. 2d 757; 1997 Neb. LEXIS 165.

Spicer, N. (2005). *Using mixed methods in social research: An introduction for students and researchers*. Thousand Oaks, CA: Sage Publications.

Spring, J. (2004). *The American school 1642-2004*, (6th ed.). New York, NY: McGraw-Hill.

Spring, J. (1998). *Wheels in the head: Educational philosophies of authority, freedom and culture from Socrates to human rights*, (2nd ed.). New York, NY: McGraw-Hill.

Stainback, S. B. (1988). *Understanding and conducting qualitative research*. Dubuque, IA: Kendall/Hunt.

State, v. Douglas D., No. 99-1767, 2001 WI 47; 243 Wis. 2d 204; 626 N.W.2d 725; 2001 Wisc. Lexis 380, May 16, 2001, opinion filed.

Stevenson, v. Martin County Bd. Of Educ., No. 99-2685, 2001 U.S. App. Lexis 1705; 3 Fed. Appx. 25, February 6, 2001, decided.

Strauss, A.L. (1987). *Qualitative analysis for social scientists*. New York, NY: Cambridge University Press.

Strauss, A. L., & Corbin, J. (1994). Grounded theory methodology: An overview. In N.K. Denzin & Y.S. Lincoln (Eds.), *Handbook of qualitative research* (pp. 273-285). Newbury Park, CA: Sage.

Strike, K.A. & Soltis, J.F. (2004). *The ethics of teaching*, (4th ed.). New York, NY: College Press.

Summers, R.S. (1986). *Law: Its nature, functions, and limits*, (3rd ed.). St. Paul, MN: West Publishing Company.

T. ex rel. C.T., v. Lewiston Sch. Comm., Docket No. 99-202-P-H, 2000 U.S. Dist. Lexis 10674, July 27, 2000, decided.

The Fourteenth Amendment: Equal protection under the law (2002). David L. Huson, Jr.: Berkeley Heights, NJ: Enslow Publisher, Inc.

The People of the State of Illinois, v Jon Roe Morgan., 197 Ill. 2nd 404; 758 N.E.2d 813; 2001Ill. Lexis 1428; 259 Ill. Dec. 405.

Tesch, R. (1990). *Qualitative research: Analysis types and software tools*. London: Falmer Press.

Thomas Sypniewski, Jr.; Mathew Sypniewski; Brian Sypniewski v. Warren Regional Board of Education; Peter Merluzzi, in his personal and official capacity as Superintendent of the Warren Hills Regional Board of Education; Beth Godett, in her personal and official capacity as Principal of the Warren Hills Regional High School; Ronald Griffith; Phillip Chalupa, in their personal and official capacity as Vice Principals of Warren Hills Regional High School; Elizabeth Ames; Marcy Matlosz; Ray Busch; Suyling Huerich; James T. Momary; Nancy Fallen; William Miller; Bradley Breslin; Scott Schantzenbach, in their official capacity as members of the Warren Hills Regional Board of Education Mathew Sypniewski; Brian Sypniewski, Appellants., 307 F.3d 243; 2002 U.S. App. Lexis 20814.

Todd, v. Duneland School Co., 7th U.S. Circuit Court of Appeals, No. 01-3667 (2002).

United States Congress Senate Committee on Labor, & Human Resources Subcommittee on Disability Policy. (1995). *Reauthorization of the IDEA: Discipline issues: Hearing before the subcommittee on disability policy of the committee on labor and human resources, United States Senate, mm one hundred fourth Congress, first session on examining the effect of federal policy on the ability of school systems to*

discipline students with disabilities, July 11, 1995. Washington, DC: U.S. Government Printing Office.

Van Geel, T. (1987). *The courts and American education law.* Buffalo, NY: Prometheus Books.

Wagner, v. Fort Wayne Cmty. Schs., 2003 U.S. Dist. Lexis 5624, March 19, 2003, decided.

Wainwright v. State, 302 Ark. 371; 790 S.W. 2d 420 (1990) cert. denied, 111 S.C. 1123 (1991).

Walker, H.M. (1995). *The acting-out child: Coping with classroom disruption* (2nd ed). Longmont, CO: Sopris West.

Walker, H.M., & Walker, J.E. (1991). *Coping with noncompliance in the classroom: A positive approach for teachers.* Austin, TX: Pro-Ed.

Weintraub, F.J. & Abeson, A. (1974). New policies for the handicapped: The quiet revolution. *Phi Delta Kappan*, 55(8), 526-529.

West Clark Community Schools v. H.L.K., 1997 Ind. LEXIS 253.

Westfield High School. L.I.F.E. Club, v. City of Westfield., 249 Supp. 2d 98; 2003 U.S. Dist. Lexis 4084, March 17, 2003, decided.

Willis by Willis, v. Anderson Community Sch. Corp., No. 98-1227, 1998 U.S. App. Lexis 21923, September 6, 1998, decided.

Wood v. Henry County Public Schools, 255 Va. 85; S.E. 2d 255; 1998 Va. LEXIS 27.

Woods v. Winchester School Board, 49 Va. Cir. 330; 1999 Va. Cir. LEXIS 334.

Wooten, v. Pleasant Hope R-VI Sch. Dist., No. 00-3280-CV-S-1-ECF, 139 F. Supp. 2d 835; 2000 U.S. Dist. Lexis 20478, November 28, 2000, decided.

Wrigley, J. (1992). *Education and gender equality.* Bristol, PA: Falmer Press.

Zantal-Wiener, K. (1988). *Disciplinary exclusion of special education students.* Reston, VA: Eric Clearinghouse on Handicapped and Gifted Children.

Appendices

Appendix A: Legal Citations of Cases Used in Court Reviews

Aledo Ind. School Dist. V. Reese, 987 S.W. 2d 953; 1999 Tex. App. LEXIS 2411.

Amy Morlock v. West Central Ed. District, 46 F. Supp. 2d 892; 1999 U.S. Dist. LEXIS 4155.

Atcitty v. Board of Education of San Juan County School District, 967 P.2d 1261; 355 Utah Adv. Rep. 16; 1998 Utah App. LEXIS 107.

Avery v. DeWitt Public Schools, 194 F.3d 873; 1999 U.S. App. LEXIS 28399.

Baer, v. Klagholz., 339 N.J. Super. 168; 771 A.2d 603; 2001 N.J. Super. Lexis 141, April 4, 2001, decided.

Balbi v. Ridgefield Public Schools, 2000 Con. Super. LEXIS 2141.

Barre v. Board of Ed. Of the Wm. R. Burton Voc. Ctr. Schools, 2000 Ohio App. LEXIS 1606.

Benjamin A. Ratner and Beth Haney, v. Loudoun County Public Schools; Edgar B. Hatrick, Harry E. Bibb, Joseph L. Mauck, and Roberta Griffith., 2001 U.S. App. Lexis 16941.

Board of Ed. Of City School Dist. Of City of NY v. L.C., 741 N.Y.S. 2d 589; 2002 N.Y. App. Div. LEXIS 3847.

Board of Ed. Of Sacramento City Unified School District v. Sacramento County Board of Ed., 85 Cal. App. 4th 1321; 2001 LEXIS 4; 102 Cal. Rptr, 2d 872; 2001 Cal. Daily Op. Service 180; 2001 Daily Journal DAR 207.

Board of Ed. Of Avon Lake School Dist., 9F. Supp. 2d 811; 1998 U.S. Dist. LEXIS 15672.

Board of Ed. V. Nathan R., 199 F.3d 377; 2000 U.S. App. LEXIS 206.

Boucher v. School Board of the School District of Greenfield, 134 F. 301821; 1998 U.S. App. LEXIS 453; 26 Media L. Rep. 1394.

Brian A. v. Stroudsburg Area School District, 141 F. Supp. 2d 502; 2001 U.S. Dist. LEXIS 11007.

Appendix A: (Continued)

Bundick v. Bay City Ind. School Dist., 140 F. Supp. 2d 735; 2001 U.S. Dist. LEXIS 5291.

Byars, v. City of Waterbury., 47 Conn. Supp. 342; 795 a.2d 630; 2001 Conn. Super. Lexis 3313, November 19, 2001, decided.

C.G. v. Cape Henlopen Sch. Dist. Bd. of Ed., 2001 Del. Super. LEXIS 1982.

Corpus Christi Ind. Sch. Dist. V. P.H., 1 S.W. 3d 352; 1999 Tex. App. LEXIS 6625.

Cory D., by and thru his mother and next friend, Diane D., v. Burke County School District, F.3d 1294; 2002 U.S. App. LEXIS 4300.

Covington v. Knox County School System, 205 F.3d 912; 2000 U.S. App. LEXIS 3369; 2000 Fed. App. 0079P (6th Cir.).

Cross County School District v. Spencer, 75 Ark. App. 421; 58 S.W. 3d 406; 2001 Ark. App. LEXIS 766.

Cypress-Fairbanks Independent School District, v. Michael F. b/n/f/ Mr. and Mrs. Barry F., 118 F.3d 245; U.S. App. Lexis 17603; 38 Fed. R.

Denson v. Benjamin, 1999 Tenn. App. LEXIS 561.

Doe v. Board of Ed. Of the Elyria City Schools, 1998 U.S. App. LEXIS 10783.

Doe & Doe v. S&S Consolidated I.S.D., Wardell, and Imbert, 149 F. Supp. 2d 274; 2001 U.S. Dist. LEXIS 13526.

Dustin W. Seal, v. Allen Morgan, Superintendent, Knox County School; Knox County Board of Education, Vicki Dunaway, principal, Powell High School., 229 F.3d 567; 2000 U.S. App. Lexis 24939; 2000 FED App. 0358p.

E.S. v. Ashford Bd. of Educ., 134 F. Supp 2d 462; 2001 U.S. Dist. LEXIS 4023.

Exp. Of N.S. from Parkers Prarie Ind. Sch. Dist. No. 547; Minn. App. LEXIS 1429.

Farrin v. Maine School Admin. Dist. No. 59, 165 F. Supp. 2d 37; 2001 U.S. Dist. LEXIS 16358.

Appendix A: (Continued)

Fisher v. Buckburnett Indep. Sch. Dist., 419 F. Supp. 1200 (N.D. Tex. 1976).

Fister v. Minnesota New Country School, 1998 U.S. App. LEXIS 9508.

Gaede v. Kent School District, 1998 Wash. App. LEXIS 707.

Golden, v. Anders., 324 F.3d 650; 2003 U.S. App. Lexis 5996.

Hemberger v. LaBrae Board of Ed., 1997 Ohio App. LEXIS 5464.

Hamilton v. Board of School Commissioners of Mobile County, Alabama, 993 F. Supp 884; 1996 U.S. Dist. LEXIS 8625.

Hamrick, v. Affton Sch. Dist. BD. Of Educ., 13 S.W.3d 678; 2000 Mo. App. Lexis 340, March 7, 2000, filed.

Hanna v. Kent School District, 2001 Wash. App. LEXIS 981.

Hawkins, v. Sarasota County School Board., 322 F.3d 1279; 2003 U.S. App. Lexis 3730.

In re S.J. v. S.J., 291 Ill. App. 3d 703; 684 N.E. 2d 1009; 1997 Ill. App. LEXIS 616; 226 Ill. Dec. 13.

In re Dilley Indep. Sch. Dist., 23 S.W. 3d 189, 2000 Tex. App. LEXIS 4266.

Iwenofer v. St. Luke School, 132 Ohio App. 3d 119; 724 N.E. 2d 511; 1999 Ohio App. LEXIS 291.

J.S., v. Shoreline Sch. Dist., 220 F. Supp.2d 1175; 2002, U.S. Dist. Lexis 19049, June 20, 2002, decided.

Jason Bercovitch, et. al., v. Baldwin School, Inc. et. al., 133 F.3d 141; 1998 U.S. App. LEXIS 537; 8 AM. Disabilities Cas. (BNA) 259.

J.C. Regional School District No. 10, 115 F. Supp. 2d 297; 2000 U.S. Dist. LEXIS 14448.

J.N. v. Bellingham School District, 1999 Wash, App. LEXIS 1426.

Appendix A: (Continued)

J.O. v. Orange Township Board of Ed., 287 F.3d 267; 2002 U.S. App. LEXIS 6888.

J.S. v. Bethlehem Area School District, 794 A.2d 936; 2002 Pa. Commw. LEXIS 83.

Jeremy Magyar, v. Tucson Unified School District, 958 F. Supp. 1423; 1997 U.S. Dist. Lexis 3751.

John and Jane Doe, v. Board of Education of Oak Park & River-Forest High School District 200, Nancy Smiley, Donald Offermann, Stephan C. Bruner., 115 F.3d 1273 ; 1997 U.S. App. Lexis 12351.

Johnson v. Metro Davidson County School System, 108 F. Supp. 2d 906; 2000 U.S. Dist. LEXIS 11845.

Joshua Mahaffey, v. Peni Aldrich, in her capacity as Director of High School and Continuing Education Services, and the Board of Education of the Waterford School District., 236 F. Supp. 2d 779; 2002 U.S. Dist. Lexis 25345.

Justin Dohmen, v. Twin Rivers Public Schools; Twin Rivers School District; Larry Stek; Craig Gertsch; Dave Baxa; Deb Engle; Lee Van Winkle; Susan Cromwell; Darlene Whitlow; Dale Heth; and Donald Graff., 207 F. Supp. 2d 972; 2002 U.S. Dist. Lexis 11861.

Kate Frazier et al. v. Fairhaven School Committee et. al., U.S. Court of Appeals for the First Circuit 276 F.3d 52; 2002 U.S. App. LEXIS 282; Jan. 9, 2002 decided.

Killion, v. Franklin Reg'l. Sch. Dist., Civil Action No. 99-731, 136 F. Supp.2d 446; 2001 U.S. Dist. Lexis 3490, March 22, 2001, decided.

Kipp v. Lorain Bd. of Ed., 2001 Ohio App. LEXIS 1579.

Knox County Schools v. Chris L., 1997 U.S. App. LEXIS 1041.

Kyle P. Packer et. al. v. BOE of the Town of Thomaston, 246 Conn. 89; 717 A.2d 117; 1998 Conn. LEXIS 297.

LIH, v. New York City Bd. Of Educ., CV-00-3876, 103 F. Supp. 2d 658; 2000 U.S. Dist. Lexis 10152, July 17, 2000, decided.

Appendix A: (Continued)

Logiodice v. Trustees of Maine Central Institute, 135 F. Supp. 2d 199; 2001 U.S. Dist. LEXIS 8488.

Mahaffey, v. Aldrich., 236 F. Supp. 2d 779; 2002 U.S. Dist. Lexis 21947, November 7, 2002 , decided.

Marilyn Golden, v. William A. Anders., 324 f.3d 650; 2003 U.S. App. Lexis 5996.

Martin, v. Shawano-Gresham Sch. Dist., No. 01-3193, U.S. Court of Appeals for the Seventh Circuit, 2002 U.S. App. Lexis 13245, July 3, 2002, decided.

Matter of expulsion of G.H., 2001 Min. App. LEXIS 787.

MCall v. Bossier Parrish School Board, 785 So. 2d 57; 2001 La, App. LEXIS 553.

Mingo v. Bd. of Ed. Of City of Hartford, 1999 Conn. Super. LEXIS 2985.

Meyer v. Hillsdale Comm. School Dist., 226 Mich. App. 375; 573 N.W. 2d 77; 1997 Mich. App. LEXIS 385.

Mr. J., et. al. v. BOA, et al., 98 F. Supp. 2d 226-227; 2000 U.S. Dist. LEXIS 7714.

NAACP Ryer v. City of Yonkers & Yonkers BOE, U.S. Court of Appeals for 2nd Circuit 197 F.3d 41; 1999 U.S. App. LEXIS 29893 Nov. 16, 99- Decided.

Nelson, v. Moline School District., 725 F. Supp. 965 (C.D. III. 1989).

Nick Emmett, v. Kent School District no. 415., 92 F. Supp. 2d 1088; 2000 U.S. Dist. Lexis 4995.

Nicol, v. Auburn-Washburn USD 437.,231 F. Supp. 2d 1092; 2002 U.S. Dist. Lexis 21947, November 7, 2002, decided.

Nisinzweig, v. Kurien., 2001 Conn. Super. Lexis 2141, August 16, 2000, decided.
Parent v. Osceola County School Board, 59 F. Supp. 2d 1243, 1999 U.S. Dist. LEXIS 18131.

Appendix A: (Continued)

Peterson v. Ind. Sch. District No. 811, 999 F. Supp. 665; 1998 U.S. Dist. LEXIS 5012.

Phillips v. Anderson County Sch. Dist.5, 987 F. Supp. 488; 1997 U.S. Dist. LEXIS 19932.

Pirschel v. Roy Brad Sorrell, 2F. Supp. 2d 201930; 1998 U.S. Dist. LEXIS 5503.
Robert Wayne and Judy Wayne, v. Kenneth Shadowen, Terrell W. Powell, Keith Travis, Mike Wyatt, J.P. Lyles, Eddie Jones, and Randy Travis, Defendant-Appellees., 15 Fed. App. 271; 2001 U.S. App. Lexis 16896.

Rodiricus L. v. Waukegan School Dist. 460, 90 F.3d 249; 1996 U.S. App. LEXIS 18366.

Rogers v. Gooding Pub. Joint Sch. Dist. No. 231, 135 Idaho 480; 20P. 3d 16; 2001 Ida. LEXIS 11.

Roosevelt Fuller, et. al v. Decatur Public School Board of Ed. School District 61, et al., 78 F. Supp. 2d 812; 2000 U.S. Dist. LEXIS 278.

Sandra Remer, parent of a minor son M.R., v. Burlington Area School District, 286 F.3d 1007; 2002 U.S. App. LEXIS 6880; 205 F.3d 990; 2000 U.S. App. LEXIS 3386.

School Board of Collier County, Florida v. K.C., 11th U.S. Circuit Court of Appeals, No. 00-16642 (2002).

Stafford Municipal School Dist. V. L.P., 64 S.W. 3d 559; 2001 Tex. App. LEXIS 8203.

State ex rel: T.J., 786 So. 2d 777, 2001 La. App. LEXIS 810.

State of New Jersey in the interest of G.S., 330 N.J. Super. 383; 749 A.2d 902; 2000 N.J. Super. LEXIS 193.

Steinway v. Chillicothe City Schools, 1998 Ohio App. LEXIS 6348.

Stewart v. Johnston Cty. Bd. of Ed., 129 N.C. App. 108; 498 S.E. 2d 382; 1998 N.C. App. LEXIS 635.

Appendix A: (Continued)

Stone v. Prosser Consolidated School District, 94 Wn. App. 73; 971 P.2d 1125; 1999 Wash. App. LEXIS 230.

Teshana Byers et. al. v. City of Waterbury et. al., 47 Conn. Supp. 342; 795 A.2d 630; 2001 Conn. Supper. LEXIS 3313.

T.S. Penn Manor School District, 2001 Pa. Commw. LEXIS 980.

T.W. v. Derby Unified School Dist. No. 260, 206 F.3d 1358; 2000 U.S. App. LEXIS 4334; 2000 Colo. J. C.A.R. 1466.

Thames v. Board of Education, 645 N.E. 2d 445 (Ill. App. Ct. 1994).

Thompson v. Board of the Special School District No. 1, U.S. Court of Appeals for the 8th Circuit 144 F.3e 574; 1998 U.S. App. LEXIS 9880.

Turner v. South-Western City School Dist., 82 F. Supp. 2d 757; 1999 U.S. Dist. LEXIS 20680.

Virginia Dep't. of Educ., v. Riley., 106 F.3d 559; 1997 U.S. App. Lexis 2796, February 5, 1997, decided.

Wynne Public Schools v. Lockhart, 72 Ark. App. 24; 32 S.W. 3d 47; 2000 Ark. App. LEXIS 756.

Zellman v. Ind. Sch. Dist. No. 2758, 594 N.W. 2d 216; 1999 Min. App. LEXIS 558.

About the Author

Born in Indiana, Ms. Roland received her Bachelor of Science degree in law enforcement from the University of Evansville in 1977. Moving to Florida, she was employed by the Sarasota Police Department. She then moved to Denver where she lived for five years.

Advocating for a son with Attention Deficit Hyperactivity Disorder, she returned to school specializing in special education. She graduated from the University of South Florida in 1993 with a Master's Degree in Education, going onto teach high school severely emotionally disturbed students in Manatee County, and later becoming an assistant principal.

In 2001, Ms. Roland moved to Duval County Florida as a high school assistant principal. Moving to Port Charlotte Florida she worked as a behavior specialist for the Lee County school system. She is currently a middle school assistant principal in Manatee County. Ms. Roland will receive her Doctor of Education degree in May 2006.