**The Evolution of Special Education Discipline Policy**

**A Historical Policy Analysis**

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# Chapter 1

## Introduction

In an address to the 75th annual convention of the American Federation of Teachers, (AFT), in 1998, President Bill Clinton stated, "Learning cannot occur unless our schools are safe and orderly places where teachers can teach and children can learn. Wherever there is chaos where there should be calm, wherever there is disorder where there should be discipline, make no mistake about it, it's not just a threat to our classrooms and to your mission, it is a threat to the strength and vitality of America" (Clinton, 1998, p. 6).

In his book, *Why is it so Hard to Get Good Schools*, Larry Cuban writes, "Consider the matter of discipline. Since 1969, public opinion polls on education have asked Americans to identify the single most pressing issue they see in schools. Every year parents and non-parents named school discipline as one of the top three problems that schools needed to address" (Cuban, 2003, p.33).

"All students should receive their education in safe, orderly, and well-maintained schools. Maintaining such environments, however, has been a major challenge for educators" (Yell & Rozalski, 2008, p.1). In order to maintain safe school environments that are conductive to learning, educators need the tools to prevent student misconduct, and the means to address student behavior issues when they arise. This necessitates that school officials develop effective discipline systems that balance the need to maintain safe and orderly schools with the need to safeguard the right of all students to receive a meaningful education. In addition to maintaining safe school environments, educators need to be aware of existing legal constraints when imposing disciplinary consequences on students who have misbehaved (Yell & Rozalski, 2008).

These restrictions which come from the federal government, state governments, and the courts place certain conditions and restraints on school officials when imposing disciplinary sanctions on students enrolled in public schools. This is especially true when officials find themselves in the position of disciplining students with disabilities (Yell & Rozalski, 2008).

The purpose of this study is to examine the evolution of the special education discipline policy as contained in the Individuals with Disabilities Education Act (IDEA, 2004), and to look at how that policy has affected those at the local level who are responsible for its implementation. The current policy, over thirty years in the making, took the time and attention of many individuals, advocacy groups, legislatures, and courts, and as such is a worthy topic for study and reflection.

**The Problem**

The Individuals with Disabilities Education Act (IDEA) originally called the Education for All Handicapped Children's Act or PL 94-142, was enacted by Congress in 1975 to provide grants to the States for the education of children with disabilities. At that time it was determined by Congress and the courts that well over one million children with disabilities were denied an education by school officials; that 50% of disabled children and 82% of children with mental illness (behavioral and emotional disorders), were among those denied appropriate educational services (Reauthorization of the IDEA, 1995). Consequently, one of the primary motives for the enactment of this legislation was the fact that children with emotional and behavioral disabilities often failed to receive an appropriate education because they were being suspended or expelled from their schools.

Congress also determined in 1975, that the arbitrary use of discipline was the major strategy employed by school administrators to exclude, segregate and deny services to these children (Reauthorization of the IDEA, 1995). The statute as originally enacted, provided for the free and appropriate education in the least restrictive environment for children with disabilities, (including those with behavioral disorders), but contained no language regarding how those children were to be disciplined if they did misbehave. The act did, however, contain significant due-process protections for children with disabilities and their advocates, and it contained a stay-put provision. The stay-put provision provided that a student with disabilities was to remain in his or her current educational setting during the pendency of any due-process proceedings, unless the local educational agency and parents or guardians agreed to a change in placement (Reauthorization of IDEA, 1995). The concept of "stay-put" was included in the original legislation to help eliminate the then regular practice of expelling children, especially those with emotional and behavioral disabilities, from school (Jones, 2001).

The problem therefore, centered on how school officials, after the enactment of PL 94-142, could apply disciplinary procedures to students with disabilities who were guaranteed a free and appropriate education in the least restrictive environment if one of those students violated a code of student conduct, when typical punishments (suspensions or expulsion), constituted a clear denial of those rights.

The Individuals with Disabilities Act has been reauthorized several times since 1975. It was not until the reauthorizations in 1997, and again in 2004 that significant rules regarding the discipline of students with disabilities were added to the statute. This study examines the forces and institutions involved in the creation of the current policy, a policy which attempts to resolve

the problem of how to discipline students with disabilities while maintaining their rights to a free and appropriate education in the least restrictive environment.

**Research Questions, Perspective and Framework**

This study is a historical analysis which investigates the evolution of the special education discipline policy over time and further examines the impact of implementing that policy at the local level. The following two questions guide this research study.

(1) What forces and institutions created and shaped special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act?

(2) How have the IDEA discipline policy and resultant regulations affected and defined practice at the local level?

To address the aforementioned questions guiding this policy study, I conducted a longitudinal analysis of the legislation, reauthorizations and case law that had an effect on the evolution of the discipline policy as contained in the current Individuals with Disabilities Education Act (IDEA) 2004. Given that this is a study of the evolution of public policy, I utilized Kingdon's (1995) theories regarding how ideas become policy as the framework upon which to base my findings. Additionally, I used Itkonen's (2009) theory regarding venue change to address the issue of the multiple institutions involved in the creation of this public policy. Wilson's (1989) theory on bureaucracies - how front-line operators interpret and implement public policy, was the framework employed for addressing the question regarding how IDEA's discipline policy has affected and defined practice at the local level. These theoretical frameworks are presented in chapter two.

**Terms**

As in other fields, the world of special education comes with a special vocabulary, and a myriad of acronyms. The original law passed in 1975, mandating public education for students with disabilities was originally called the Education for All Handicapped Children's Act, or EACHA. This act is also referred to as P.L. 94-142, where the P.L. stands for public law, and was the 142nd piece of legislation passed by the 94th Congress. During the 1990 reauthorization of the special education legislation the name was changed to the Individuals with Disabilities Education Act, IDEA, or P.L. 101-476. Throughout this study the IDEA is also referred to as the Act or the statute.

IDEA guarantees a free and appropriate education, or FAPE, in the least restrictive environment, or LRE. Although the Act did not expressly define FAPE, a situation that led to a Supreme Court decision in *Board of Education v. Rowley* (1982), the Court concluded that a, "free and appropriate public education consists of educational instruction specially designed to meet the needs of the handicapped child, supported by such services as are necessary to permit the child to benefit from the instruction" (*Board of Ed. v. Rowley*, 1982, p. 2). The definition also provided that the instruction and services be provided under public supervision, at public expense, meet the State's educational standards, approximate the grade levels used in the State's regular education, and be in accordance with the child's IEP, (*Board of Ed. v. Rowley*, 1982). The term least restrictive environment, or LRE, means that to the greatest extent possible, students with disabilities are to be educated with their non-disabled peers in general education settings. Any smaller specialized class, such as a special day class (SDC), or one-on-one tutorial situation, such as home-hospital teaching (HHT), is considered more restrictive.

An IEP refers both to the document that describes a student with disabilities' individualized educational program, and to the team meeting where the student, his or her parent or guardian, an administrator (LEA representative), teacher, case carrier, and other specialized personnel meet to develop the individualized educational program for the student. LEA stands for Local Education Agency; an LEA representative is generally a member of a school's administrative team. SEA stands for State Education Agency, which includes school administrators at the state level.

There are several other terms specific to the topic, which I have defined within the sections of the text where they apply, and where I think they will be easier to understand as the story unfolds. And it is a story, involving many characters, including congressmen, attorneys, administrators, teachers, students, and parents; a story that has unfolded in many venues, from classrooms and court rooms, to the halls of Congress. And it is a story, I think, that has not yet reached a definitive conclusion.

**Limitations**

As previously stated, the creation of the current IDEA policy regarding discipline took many years and involved many individuals and organizations, and over that time much has been written on the topic of the special education discipline policy which could inform this research. I have read a lot, but certainly not everything. There have also been many cases adjudicated in court regarding the issue under study, several of which I am aware of and have read, but again, not all of them. All of the information in this study was second hand and publically available – I was not present, nor did I personally interview anyone who was. Additionally, due to the scope

of the project, all information retrieved was informally coded as I did not have an independent coder for reliability.

In the next chapter I will present theories of policy formation (Kingdon, 1995), bureaucracies (Wilson, 1989) venue change (Itkonen, 2009), and the legislation relevant to special education discipline policy passed by Congress and the State of California.

# CHAPTER 2

## Conceptual Framework

Disciplining students with special needs under the current Individuals with Disabilities Education Act (IDEA 2004) is complex; influenced by federal and state legislation, and shaped by case law. In order to address the questions of what forces and institutions have shaped current special education discipline policy and how these policies have affected and defined practice at the local level, this study examines the institutions, legislation and case law that have influenced the current special education discipline policy. Additionally, this study addresses theories of policy formation, bureaucracies, and venue change in order to explain how the evolution of special education discipline policy occurred over time. This chapter begins with a discussion about how public policy is created, an explanation of the complexity of implementing the goals and tasks inherent in such policy, and a description of how those interested in changing public policy can access the policy-making process in a variety of arenas. Following the discussion on theory, this chapter then describes relevant legislation passed by Congress and the state of California presented in chronological order. Finally, this chapter contains a full account of the current legislation regarding special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act.

### Policy Creation

In a discussion about how institutional structures have shaped special education discipline policy, it is useful to investigate how the institutions responsible for the creation of public policy operate. In *Agendas, Alternatives and Public Policies,* John Kingdon (1995),

discusses the policy windows and the joining of the streams in order to explain the process behind how ideas become public policy. He describes three streams constantly running through the system; the political stream, the problem stream, and the solution stream. The policy window is an "opportunity for advocates of proposals to push through their pet solutions; or to push attention to their special problems" (Kingdon, 1995, p.165). The three streams come together at critical times; a problem is recognized in the problem stream, a solution or solutions are developed in the policy community (the solution stream), and some political change makes it the right time for policy change (the political stream); an open policy window is created and policy is enacted. Kingdon likens the opening of policy windows to the windows of opportunity for a space launch; the launch must occur when the window is open, or the opportunity will be lost (Kingdon, 1995). Problems and solutions often float in the streams until a favorable political stream allows them to couple in an open window. Policy windows open by the occurrence of compelling problems, or by events in the in the political stream; these 'focusing events' create either problem windows, or political windows. The governmental agenda is set in the political or problem streams, alternatives are created in the policy stream (Kingdon, 1995).

Policy entrepreneurs are individuals who look for the coupling of the streams and open windows; they are advocates who are willing to devote their time, energy, money and reputation to promote certain proposals. Policy entrepreneurs are found in many locations. They might be a member of the House or Senate, a cabinet secretary, an academic, a lobbyist, the leader of a powerful interest group, or a career bureaucrat. Entrepreneurs need to possess expertise, negotiating skill and persistence, and they must be ready to push their proposals when the time is right. They play a major role in the coupling of streams at the open policy window, by attaching

solutions to problems, overcoming objections by redrafting proposals, and by taking advantage of politically propitious events, such as a change in administration (Kingdon, 1995).

Kingdon also discusses "predictable windows", those windows which open regularly and predictably. "Many government programs expire on a certain date and must be reauthorized" (Kingdon, 1995, p. 186). When a program comes up for reauthorization, it can simply be a "routine extension, or it can involve substantial revision, serious questioning, or even abolition of the program" (Kingdon, 1995, p. 187). The predictability of the reauthorization process allows interest groups, bureaucrats, and others to accumulate possible amendments, changes, and proposals and wait for the opportunity to bring their ideas forward and push their proposals. The bureaucrats, interest groups and policy entrepreneurs simply, "need to be ready when the time for renewal comes" (Kingdon, 1995, p. 187).

**Goals and Tasks**

In addition to knowing about the players and processes inside of government that create public policy, it is beneficial to understand who is responsible to carry out the goals inherent in such policy. In his book, *Bureaucracy: What Government Agencies Do and Why They Do It,* James Wilson (1989), discusses goals and tasks. When government creates public policy, goals are created for particular bureaus or agencies. For instance, the goal of the State Department is to promote the long-range security and well-being of the United States, and the basic goal of the Department of Education is to educate the young and create good citizens. Some goals are unclear because people's ideas will differ as to the meaning of words like "well-being", "potential", "security", and "orderly". People will also disagree about what should be sacrificed in order to attain certain goals (Wilson, 1989).

Government agencies are usually monopoly providers of some service, supported by legislative appropriation, paid for by taxes collected from citizens. To understand a government agency, it is necessary to understand what its front-line workers, or operators, do. Generally, an operator is the person who does the work (performs the task) that justifies the existence of the organization; for instance, guards in a prison, doctors and nurses in hospitals, officers in a police department or teachers in a school (Wilson, 1989). It is the efforts of the operators that determine whether or not the agencies' clients (the public) are satisfied. There is a tendency for the public to criticize inadequate performances of certain agencies, but that makes sense, according to Wilson, only if the agencies' goals are clear enough so that reasonable people can agree on what they mean, and if the agencies have the authority and resources needed to achieve the goals. "A clear goal is an operational goal" (Wilson, 1989, p. 34).

Some government agencies do have clear, operational goals and the tasks of the front-line workers can be construed from those goals. The Social Security Administration (SSA) is a case in point. The SSA is required by law to send monthly checks to eligible retirees, the amount determined by a complicated, but exact formula. The SSA has been able to perform this task with precision in spite of the vast numbers of claims it processes, due in large part to well-understood laws and regulations, or clear goals (Wilson, 1989).

However, when agency goals are inconsistent or vague (the usual case according to Wilson), what the front-line workers or operators do, will be shaped by circumstance; situations they encounter at the work site, their own beliefs and experiences, external pressures on the job, and by peer expectations.

When goals are ambiguous or vague, circumstances become important. The situations operators cope with on a daily basis, in a variety of jobs, define their tasks. Wilson refers to these circumstances as "situational imperatives" (Wilson, 1989, p. 38). If a person were to take a job as a police officer, prison guard, work site inspector or school teacher, the behavior of his or her clients and the resources available will shape what he or she does, regardless of the stated goals of the organization. How the person performs the job will vary depending on how he or she is supervised, but the central task will be defined, regardless of supervision, by the imperatives of the situation the person confronts daily. In the case of a prison guard or correctional officer, for example, whatever the administrator might say is the goal of the institution; the main imperative might be to protect oneself and remain unharmed (Wilson, 1989). The institutional goal for classroom teachers is less ambiguous than other client-serving organizations, as teachers do not normally have to deal with criminals or convicts. For teachers, however, even though teaching and learning is an understandable goal, it is not their only concern. Teachers face two major tasks; to focus student energies to produce learning, and to control student energies to maintain order (Wilson, 1989). Ideally these two tasks complement each other; for learning to occur, order must exist, however, in practice the two tasks can sharply diverge. The preoccupation with maintaining order, in some instances, can dominate the concern for learning. Situational imperatives, therefore, may have their greatest effect on how operators define their responsibilities when the organization must deal with uncooperative or threatening clients face-to-face (Wilson, 1989).

**Venue Change**

The Individuals with Disabilities Act (IDEA) is a federal law, passed by Congress, and signed by the President. As such, all adjudication regarding IDEA is brought to federal courts. The judicial branch of government has the authority to decide the constitutionality of federal law and to settle disputes regarding those laws. By the nature of federalism these institutions, the administration, Congress, and the judiciary are vertically independent.

"Special education policy is a result of interactions among legislation, regulations, judicial interpretation, and local implementation" (Itkonen, 2009, p. 10). In her book, *Special Education Interest Groups in National Policy,* Itkonen discusses the idea of venue change.

Advocacy groups will target institutions depending on the stage of the policy process. For instance, during the initial creation of the law or during reauthorizations, advocacy groups and entrepreneurs target Congress, and after the law is passed, they will change venue and target the Department of Education to lobby during the writing of regulations (Itkonen, 2009). Groups and individuals, at the local level, unhappy with the implementation of certain policy, may invoke their due process rights and take their concerns to the courts to settle their disputes. If unhappy with the decision of a local hearing, issues may move into district courts and be appealed to circuit courts; some eventually going to the Supreme Court. This integral part of the design of our government permits individuals and groups to access the policy-making process in a variety of arenas, or venues. If dissatisfied in one venue, depending on motivation and resources, issues may be taken into another.

Following is a review of relevant legislation that has shaped special education discipline policy.

**The Education for All Handicapped Children's Act, 1975**

The Individuals with Disabilities Education Act (IDEA 2004), is a federal law that regulates and supports students identified as having disabilities in relation to their education and related services. IDEA is designed to guarantee that these students receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE). This means that, to the greatest extent possible, students with disabilities are to be educated with their non-disabled peers in a general education setting. IDEA now contains explicit regulations regarding disciplinary proceedings for children involved in special education; however, this was not the case in 1975 when the legislation was enacted.

Congress passed the Education for All Handicapped Children Act (PL 94-142) in 1975 (renamed IDEA in 1990), based on findings that the needs of over half of the children with disabilities in the United States were not being fully met. Specifically, Congress found that an estimated one million children with disabilities were being excluded from public school while others allowed to participate, were not able to realize the full benefits of an education because their disabilities went undetected (Osborne, 2001). Before the passage of PL 94-142, the exclusion of students with disabilities from the regular classroom was a national problem that left many of these students without an opportunity to get an education (Boothby, 2002). The Education for All Handicapped Children's Act created a mandate for schools to guarantee equal access to education for students with disabilities, however, "it did not address the conditions under which that access could be suspended or revoked" (Etscheidt, 2002, p. 408). The law (PL 94-142), as initially enacted and amended, did not contain any provisions directly addressing discipline; it was silent on the subject (Osborne, 2001).

**IDEA Reauthorizations, 1983, 1986, 1990**

When Congress passes laws, they are usually not permanent and have to be reauthorized after a period of time; in the case of IDEA, this reauthorization process occurs approximately every five-to-seven years. The reauthorization process is designed to allow Congress and the administration to collect data and information about the existing law in order to determine its continuing efficacy. To do this, hearings are held, and input is obtained from various stakeholder organizations invited by Congress. Additionally, lobbying groups and non-profit organizations visit Congressional offices and recommend changes or amendments to the law. This process starts at the committee level in both the House and Senate. The committees hold hearings and request input. Changes are made to the bill in the form of amendments which are voted on at the committee level. The bill is then scheduled for debate on the floor of the Senate and the House. If the Senate and House pass different bills, members from both sides form a conference committee to hammer out the differences. The bill then returns to the House and the Senate for a yes or no vote, after which, (if passed), it is sent to the president for his signature (Public Education Network, 2008).

IDEA went through three, what Kingdon (1995), would call "routine" reauthorizations, remaining largely unchanged for twenty years (U.S. Commission on Civil Rights, 2002). In the early 1980's, President Reagan proposed to dramatically reduce special education rules by calling for more administrative flexibility for state and local agencies and eliminating many paperwork requirements. In 1982 at the Senate hearing on Reagan's proposed regulations, there was strong bipartisan opposition supported by opposition from disability advocacy groups to his proposed regulations, which were subsequently dropped (Itkonen, 2009). During the 1983 reauthorization, Congress reauthorized the discretionary programs, and provided funding for

research and demonstration projects in early intervention and early childhood special education, and school-to-work transition programs.[1] During the 1986 reauthorization, Congress mandated special education services for preschoolers, and established a program to assist states in developing comprehensive, multi-disciplinary statewide systems for early intervention with infants. [2] When the legislation was reauthorized in 1990, Congress changed the name of the law from the Education for All Handicapped Children's Act, to the Individuals with Disabilities Education Act, or IDEA. Additionally, Congress reauthorized and expanded the discretionary programs already in place, mandated school-to-work transition services, and added autism and traumatic brain injury to the list of categories for children and youth to be considered eligible for special education services.[3]

**The Hughes Bill, 1990**

When federal law does not include language on a certain issue, states can enact legislation on their own which goes beyond the federal requirement; the Hughes bill is a case in point. In September of 1990, the Hughes Behavioral Intervention Bill became law in California. This law ensures the rights of special education students to have positive behavioral intervention plans (Appendix A). Positive behavioral interventions do not include procedures which can cause pain or trauma. Even in emergency behavioral situations, the law stipulates that interventions may not include:

(1) The release of toxic or unpleasant sprays near a student's face;

(2) The denial of sleep, food, water, shelter, or access to bathroom facilities;

(3) Subjecting the student to verbal abuse, ridicule or humiliation;

[1] http://www.parentsunitedtogether.com/page15.html
[2] http://www.parentsunitedtogether.com/page15.html
[3] http://www.parentsunitedtogether.com/page15.html

(4) The use of locked seclusion;

(5) Any impediment to the adequate supervision of the student;

(6) Depriving the student of one or more of his or her senses;

(7) Employing any device, material or object that simultaneously immobilizes all four extremities (except for prone containment in emergencies)([5 Cal. Code Regs. Sec. 3052(i)(l).], Hughes Bill, 1997).

The law applies to students with exceptional behavioral needs in public and non-public schools. It requires that a Positive Behavior Intervention Plan (BIP) be developed by an Individual Education Plan (IEP) team when a student exhibits a serious behavior problem that interferes with implementing the goals of the student's IEP. A serious behavior problem is one that is self-injurious or assaultive, causes serious property damage, or is pervasive and maladaptive and for which instructional and behavioral approaches specified in the student's IEP have been ineffective (Hughes bill, 1997, Cal.Code Regs. Sec.3001(y)). When the systematic use of behavior interventions in response to a serious behavior problem is proposed, a Functional Analysis Assessment (also known as a Functional Behavioral Assessment), must be conducted by the Behavioral Intervention Case manager, or by a person who has documented training in behavioral analysis, with an emphasis on positive behavioral intervention (Hughes bill, 1997). When agreed upon by an IEP team, the positive behavioral intervention plan becomes part of a student's IEP. The plan must contain goals and objectives that address the targeted behavior, and describe the services to be provided in order to achieve those goals. Additionally, the chosen interventions must be positive, comprehensive, and address multiple areas such as the environment and social skills (Hughes bill, 1997, Cal.CodeRegs.Sec.3001 (d)).

**Gun-Free Schools Act, 1994**

The issue of discipline in the public schools was also on the federal legislative agenda during the early 1990's. Due to increasing violence among juveniles sensationalized in the media, the 103rd Congress was prompted to take an active interest in all venues affected by juvenile violence, including the public schools (Egnor, 2003). Congress sought to address the public's concern over the issue of violence by including a provision called the Gun-Free Schools Act as part of the GOALS 2000, Educate America Act of 1994. This act required schools to have in effect a zero-tolerance policy which would require a mandatory one year expulsion for any student who brought a gun to school. This act did not, however, address the issue of expulsion of students with disabilities (Egnor, 2003). Although the Gun-Free Schools Act did allow district superintendents to modify the expulsion requirement on a case-by-case basis, enabling school officials to consistently apply disciplinary procedures for all students in a manner that met the procedural protections for students with disabilities under IDEA, members of Congress in both parties sought more specific guidelines for dealing with students with disabilities. The 103rd Congress subsequently passed the Gorton/Jeffords amendment, which permitted school officials to unilaterally place a student with a disability in an interim alternative educational setting for up to 45 days, if the student brought a gun to school. The Gorton/Jeffords amendment which was included as an amendment to the Elementary and Secondary Education Act of 1965 was the first discipline amendment to IDEA (Egnor, 2003).

**IDEA Reauthorization 1997**

When the 104th Congress began in 1995, those responsible for IDEA reauthorization attempted to craft a bill that would receive widespread bipartisan support in Congress as well as

among the various stakeholder groups (Egnor, 2003). It was hoped that the legislation would be unanimously reauthorized as in the past, the discipline issue, however, caused extensive debate. Republicans and Democrats strongly disagreed over discipline policy, and members of the Senate subcommittee on disability policy were at tremendous odds over proposals to expand the Gorton/Jeffers amendment (Egnor, 2003). Hearings were held and proposals were made, but consensus was not reached. A press release was issued on Oct. 1, 1996, stating that IDEA reauthorization had been postponed because Congress did not have enough time to address the issues that remained, and reauthorization would be taken up again in the 105th Congress, (Egnor, 2003).

During the 105th Congress, the Senate majority leader's chief of staff, David Hoppe, the father of a child with Down's syndrome, arranged a bicameral, bi-partisan IDEA working group to address the controversy surrounding the discipline issue. In addition he arranged a series of 'town-hall meetings' which allowed other disability and general education advocates a venue to present their concerns; hoping to come up with a consensus before a bill was presented to Congress. In May of 1997, the House of Representatives passed the IDEA reauthorization bill developed by the IDEA working group. The Senate passed the bill a month later after rejecting several proposed amendments. On June 4, 1997, President Bill Clinton signed P.L. 105-17 into law. For the fourth time in its 22 year history, Congress had overwhelmingly reauthorized IDEA, but not without making significant changes (Egnor, 2003).

In 1997, the 105th Congress did make significant changes to IDEA in P.L. 105-17. Disciplinary procedure that applied to children with disabilities was one of the most contentious issues addressed in the 1997 legislation (Jones, 1/2001). "The provisions that address discipline were among the most hotly debated and were of the greatest interest to many students, parents,

teachers, school administrators, and community members" (Boothby, 2002, p. 3). The 1997 amendments attempted to strike a "careful balance between the LEA's (local educational agency), duty to ensure that school environments are safe and conductive to learning for all children, including children with disabilities, and the LEA's continuing obligation to ensure that children with disabilities receive a free, appropriate public education" (Jones, 1/2001, p. 2). The 1997 law did not immunize a student with a disability from disciplinary procedures, but the procedures were different than those for students without disabilities. In brief, the 1997 legislation allowed school personnel the following options if a student with a disability committed an action that was subject to disciplinary procedures:

(a) A school could suspend a student with disabilities for up to 10 school days in a school year without providing educational services (Jones, 1/2001).

(b) If a student with disabilities had been suspended for more than 10 days, that student had to be provided with the services described in his Individual Education Plan (IEP), at the school's expense (Boothby, 2002).

(c) The 10-day suspension was the maximum penalty unless: 1) the student's offense involved a gun or other weapon, or the possession, use or sale of illegal drugs at school, or, 2) the school had proven that maintaining the student's current placement presented a substantial likelihood of injury to the student or to others – in such a situation, the school could place the student in an appropriate interim alternative educational setting for up to 45 days, after which the student could return to his former placement (Boothby, 2002).

(d) Whenever a school planned to use the 45-day alternative educational setting option, or any other long-term suspension or expulsion, a manifestation determination review had to be held. The manifestation review had to be conducted by an IEP team and other

qualified personnel. If the LEA had *not* conducted a functional behavior assessment and implemented a behavioral intervention plan, the IEP team needed to develop an assessment plan. If a behavioral intervention plan was already in place it needed to be reviewed and modified as necessary. If the behavioral offense was determined to be a manifestation of the student's disability, the school was not permitted to extend the alternative educational setting beyond the 45 day limit; if the offense was determined not to be a manifestation of the student's disability, the school could apply the same disciplinary procedures applicable to students without disabilities, with the exception that the services in the student's IEP would be provided for any suspensions beyond 10 days (Boothby, 2001).

(e) Parents maintained the right to contest the IEP team's decision regarding whether or not their child's behavior was a manifestation of their disability and whether or not the chosen interim alternate education setting was appropriate.

(f) Students with disabilities had the right to remain in their current educational setting (stay-put), during the pendency of any due-process hearings, unless their misbehavior involved weapons or drugs, in which case the student had to stay in the alternative setting chosen by the IEP team (Boothby, 2001).

(g) Additionally, students that had not previously been identified as disabled were protected under IDEA if it could be shown that the school knew, or should have known, a student was disabled before the behavior incident that prompted the school to take disciplinary action (Boothby, 2001).

Although IDEA was overwhelmingly reauthorized in 1997, an amendment made in the Senate by Senator Gorton (R-WA), prior to the final vote was narrowly tabled. Senator Gorton

strenuously objected to what he saw as a double-standard IDEA set with respect to discipline in public schools. He proposed that individual school districts should set up their own discipline policies in regards to students with disabilities. He claimed that local administrators and teachers knew more about educating and disciplining the students in their districts than U.S. Senators did, and that the Senators should allow the local educational agencies to do their jobs (Egnor, 2003). Senator Jeffords moved to table Gorton's amendment, which in effect was a vote to put the amendment aside. The amendment was tabled by a narrow margin, 51 to 48, and IDEA was subsequently reauthorized (Egnor, 2003). The close vote, however, indicated that there was still a great deal of discontent regarding the discipline amendments contained in IDEA 1997.

**106th and 107th Congresses, 1999-2003**

Controversy regarding the discipline of students with disabilities continued into the next two Congresses in spite of the fact that the 1997 discipline amendments had been so carefully reviewed and constructed. In the 106th Congress, violence in schools resurfaced on the congressional agenda, with the *Violent and Repeat Juvenile Accountability and Rehabilitation Act* of 1999 which passed in the Senate, and the *Child Safety and Protection Act* which passed the House, however, neither of these pieces of legislation were enacted (Jones, 1/2001). The issue regarding disciplinary procedures surfaced again during the 107th Congress. Representative Norwood (R-GA) sponsored an amendment to the No Child Left Behind Act of 2001, which would allow students with disabilities to be disciplined under the same policy as non-special needs students (Jones, 6/2001). In the Senate, Senator Sessions (R-AL) offered an amendment similar to Representative Norwood's. Senators Kennedy (D-MA) and Harkin (D-IA) argued

against the Sessions amendment, which resulted in the decision to postpone further debate on the issue until the next reauthorization of IDEA (Jones, 6/2001).

**IDEA Reauthorization 2004**

The next predictable policy window regarding the IDEA came in 2004, when once again the legislation came up for reauthorization. Disciplinary issues relating to children with disabilities remained a contentious issue during the 2004 reauthorization (Jones, 2005). Although there were significant changes made, IDEA (2004) did keep many of the provisions of the previous law. The reauthorized IDEA 2004 (P.L.108-446) was signed into law on Dec. 3, 2004, by President George W. Bush; the changes to the discipline provisions took effect on July 1, 2005, (Office of Special Education and Rehabilitative Services (OSERS), 2006).[4]

**IDEA 2004, Regulations**

The IDEA 2004 regulations regarding disciplinary procedures for children with disabilities are included below. Changes made to the 1997 provisions are noted.

**Authority of school personnel.** School personnel may consider any unique circumstance on a case-by-case basis when determining whether a change of placement is appropriate for a child with disabilities who violates a code of conduct, as long as any decision is consistent with the other requirements of the Act, (§300.530(a), Council for Exceptional Children, 2006). This language was new in the 2004 re-authorization; and it was not defined explicitly. Factors such as the disciplinary history of a student, or his or her ability to understand consequences are

[4] http://www2.ed.gov/about/offices/list/osers/index.html

examples of unique circumstances which might be considered (Council for Exceptional Children, 2006).

School personnel are permitted to remove a child with a disability who has violated a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, as long as that removal is for not more than 10 consecutive school days and as long as the same alternatives are applied to students without disabilities. These students may be removed for additional incidents of misconduct, as long as it is for not more than 10 consecutive school days in that same school year and as long as the removal does not constitute a change of placement, (§300.530(b)(1), Council for Exceptional Children, 2006). However, if a student with disabilities has been removed for ten days in a school year, during any additional removal, the public agency must provide services to the student, "so as to enable the child to continue to participate in the general education curriculum, (although in another setting), and to progress toward meeting the goals set out in the child's IEP" (Council for Exceptional Children, pp. 282-283). These services are to be determined by school personnel in consultation with at least one of the student's teachers. A student with disabilities who has incurred additional removals should also receive, as appropriate, a functional behavior assessment and behavioral intervention services that address the student's behavior violation so that it does not recur (§300.530(2)(d)(i)(ii), Council for Exceptional Children, 2006).

School personnel may apply disciplinary sanctions to students with disabilities in the same manner and for the same duration as they would for students without disabilities if the behavior that violated the school code was determined to *not* be a manifestation of the student's disability, with the exception that the student with disabilities will receive the services previously

described if the removal is longer than 10 consecutive days (§300.530(c)(e)(d), Council for Exceptional Children, 2006).

The phrase, for the duration, was an addition in the 2004 regulations; otherwise the regulatory language in the preceding three paragraphs is consistent with the regulatory language in IDEA 1997 (Council for Exceptional Children, 2006).

**Manifestation determination**. If a child with disabilities' violation of a code of conduct is considered serious enough to warrant a change of placement, a manifestation determination meeting must take place within ten days of the decision to change such a child's placement. The manifestation determination team must include a representative from the Local Education Agency (LEA), the parent (or guardian), and appropriate members of the student's IEP team, as determined by the LEA and parent. All relevant material in the student's file needs to be reviewed, including his or her IEP, teachers' observations and information from the parent (§300.530(e)(1), Council for Exceptional Children, 2006). IDEA 1997 required only that the review be conducted by an IEP team and other qualified personnel (Council for Exceptional Children, 2006). The determination that needs to be made at the manifestation determination meeting must address the following two points:

1. "If the conduct in question was caused by, or had a direct and substantial relationship to the child's disability" (§300.530(e)(i), Council for Exceptional Children, 2006, p.286).
2. "If the conduct in question was the direct result of the LEA's failure to implement the IEP" (§300.530(e)(ii), Council for Exceptional Children, 2006, p. 286).

The behavior must be determined to be a manifestation of a student's disability if the LEA, parent, and IEP team determine that either of the above two conditions are met

(§300.530(e)(2),Council for Exceptional Children, 2006). If it is shown that a student's conduct is a result of the LEA's failure to implement that student's IEP, the LEA must take immediate steps to remedy those deficiencies, by conducting a functional behavioral assessment, if one has not already been conducted, and by implementing a behavioral intervention plan. If a behavior plan has already been developed, it needs to be reviewed and modified as necessary. The student should then be returned to the placement from which he or she was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavior plan, and, except in cases where the student's misconduct involves weapons, drugs, or the infliction of serious bodily injury (§300.530(e)(3)(f)(1)(i)(ii)(2)(g), Council for Exceptional Children, 2006).

The 1997 IDEA regulations required IEP teams to answer a longer list of specific questions before making decisions regarding manifestation determinations, than are required in the 2004 regulations. Additionally, in IDEA 2004, Congress had specified that a behavior is a manifestation of a disability if it is directly and substantially related to that disability, whereas the 1997 legislation allowed parents to claim that behavior tangentially related to the disability was evidence for a manifestation determination (Council for Exceptional Children, 2006). The 2004 regulations placed the onus on the parent to demonstrate that the behavior was a manifestation of their child's disability; previously the burden was on the schools to prove the behavior was not a manifestation of the student's disability (Stein, 2005). The 1997 IDEA had also required that a functional behavioral assessment be conducted, and behavioral intervention plans be reviewed for *all* children with disabilities within 10 days of a disciplinary removal, regardless of whether the behavior was a manifestation or not (Council for Exceptional Children, 2006).

**Special circumstances.** A student with disabilities who carries or possesses a weapon, or who knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance, or who has inflicted serious bodily injury upon another person on school grounds or at school events, may be removed to an interim alternative educational setting, for not more than 45 school days whether or not the behavior is determined to be a manifestation of the student's disability (§300.530(g)(1)(2)(3), Council for Exceptional Children, 2006). IDEA 2004 changed 45 consecutive days to 45 school days which substantially increased the time a student may be removed. Additionally, the 2004 regulations included serious bodily injury as a special circumstance. Serious bodily injury is defined as, any injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, and protracted loss and impairment of a bodily member, organ, or mental faculty (Council for Exceptional Children, 2006). The student's IEP team is responsible for determining the interim alternative educational setting for the student whose placement is being changed, (20 U.S.C. 1451(k)(2), Council for Exceptional Children, 2006).

**Authority of hearing officer; procedural safeguards.** The parent must be notified on the day that any decision is made to change the placement of a child with a disability, and must be provided with a procedural safeguards notice. The parent of a student with disabilities who does not agree with decisions regarding the manifestation determination hearing, or a change of placement, or an LEA who thinks the current placement of a student is likely to result in injury to the student or to others may appeal the decision by requesting a hearing (§300.532(a), Council for Exceptional Children, 2006). A hearing officer makes decisions regarding appeals and may return the child with a disability to the placement from which the child was removed if that officer finds that the student's removal was in violation of the law, or that the behavior was a

manifestation of the child's disability. The hearing officer may also order a change of placement to an interim alternative educational setting for not more than 45 school days, if he or she determines that maintaining the child's current placement is likely to result in injury to the child or to others (§300.532(b)(2)(i)(ii),Council for Exceptional Children, 2006).

**Due process hearings.** The state educational agency (SEA), or the LEA, is responsible for arranging the due process hearing which must happen within 20 school days from the time the complaint is filed. The hearing officer must make a decision within 10 school days after the hearing is conducted (§300.532(c)(1)(2),Council for Exceptional Children, 2006). The timelines regarding expedited due process hearings were shortened in IDEA 2004: previously the due process hearing and decision had to be made within 45 days. The 2004 regulations also require that, unless the parent and the LEA agree in writing to waive a resolution meeting or to employ the mediation process, a resolution meeting must occur within seven days of the due process complaint; the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the complaint (§300.532 (c)(3)(i)(ii),Council for Exceptional Children, 2006).

When a parent or LEA has filed an appeal for due process under IDEA 2004, the student must remain in the interim alternative educational setting until the decision of the hearing officer, or until the time period has expired (not more than 45 school days), whichever comes first, unless the LEA/SEA and parent otherwise agree (§300.533, Council for Exceptional Children, 2006). It should be noted that IDEA 2004 changes the stay-put provision that previously applied to disciplinary actions. The 1997 IDEA contained a provision which stated that a child with disabilities who had been placed in an interim alternative educational setting pursuant to a serious behavior infraction, and the school personnel proposed to change the child's placement

after the expiration of the alternative placement; that during the pendency of any proceeding to challenge the proposed change-in-placement, the child must remain in his or her current placement (the placement prior to the alternative placement) (Council for Exceptional Children, 2006). IDEA 2004 eliminated this provision.

**Protections for students not yet identified as eligible for special education services.** Final IDEA 2004 regulations included greater protections for students who have not yet been identified as being eligible for Special Education services, but whose inappropriate behavior has them under consideration for disciplinary procedures. If the LEA has knowledge that the student has a disability, and had that knowledge before the misbehavior took place, the child is eligible for protection from, "the normal disciplinary response to inappropriate behavior" (Stein, 2005, p. 11). The LEA is deemed to have knowledge of a student's disability if the parent has expressed their concern in writing to school personnel or has requested an evaluation of their child. Additionally; the LEA is deemed to have knowledge if the student's teacher or other LEA personnel have expressed concerns to a director of special education or supervisory personnel about specific concerns regarding the student. An LEA would *not* be deemed to have knowledge if a parent had not allowed an evaluation of their child, had previously refused services, or if the child had been previously evaluated and had been found to not be a child with disabilities (§300.534(c)(1)(i)(ii)(2), Council for Exceptional Children, 2006). If an evaluation is requested during the disciplinary procedures, that evaluation must be conducted in an expedited manner, and until the evaluation is completed, the student should remain in the educational placement determined by school authorities (which could be an interim alternative educational setting, suspension or expulsion without services). If the evaluation shows that the student has a disability, the LEA must provide special education and related services (§300.534(2)(i)(ii)(iii),

Council for Exceptional Children, 2006). It should be noted that IDEA 2004 requires a parent to express their concerns regarding their child's possible disability in writing; the 1997 regulations permitted an oral expression of concern (Council for exceptional Children, 2006).

**Referral to law enforcement; judicial authorities.** Consistent with IDEA 1997, IDEA 2004 states that nothing in the law prohibits a local agency from reporting a crime committed by a child with a disability to appropriate authorities, nor does it prohibit State law enforcement and judicial authorities from performing their responsibilities regarding the application of Federal and State law to crimes committed by a child with a disability. The agency reporting such a crime must ensure that the child's special education and disciplinary records are transmitted to those appropriate authorities, (§300.535(a)(b)(1),Council for Exceptional Children, 2006).

**Change in placement.** Finally, the discipline regulations in IDEA 2004 included a description of what constitutes a change in placement. A change in placement occurs when a removal is for more than 10 consecutive school days, or if the child has been subject to a series of removals that form a pattern. The public agency is to determine, on a case-by-case basis, whether or not a pattern of removals exists that constitute a change in placement, and this determination is subject to review through due process procedures and judicial findings (§300.536(a)(1)(2)(b)(1)(2), Council for Exceptional Children, 2006). Some of these issues will be clarified in future court proceedings.

## Summary

Special education discipline policy as contained in the current legislation IDEA 2004 is complex. It is a result of a re-cycled policy issue that has involved many participants and several Congresses. How did special education discipline policy become so complicated, after not being

mentioned in the original legislation in 1975? Where did the idea of manifestation determination, stay-put policy, and change of placement come from? Why did this issue of disciplining students with disabilities become such a hotly debated topic that took the time and attention of so many individuals and institutions? In order to address these issues, I focused on the following two research questions:

1. What forces and institutions created and shaped special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act?
2. How have the IDEA discipline policy and resultant regulations affected and defined practice at the local level?

I used the theories of policy making (Kingdon, 1995; Itkonen, 2009) and bureaucracies (Wilson, 1989) to analyze the evolution of special education discipline policy over time. This conceptual framework allowed me to examine the roles of policy windows, policy problem and solution streams, policy entrepreneurs and front-line operators in the evolution and implementation of special education discipline policy. Additionally, I analyzed the role of venue change to demonstrate how multiple institutions have been involved in the shaping of special education discipline policy. These analyses will be presented in chapter 4.

# Chapter 3

# Methods

## Research Questions

This study analyzes the evolution of discipline policy in special education over time, and examines the impact of implementing the policy at the local level. Two basic questions guide this study.

(1) What forces and institutions created and shaped special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act?

(2) How have the IDEA discipline policy and resultant regulations affected and defined practice at the local level?

## Research Design

To address the first research question I conducted a longitudinal study using a mixed-methods design in which pertinent legislation, reauthorizations and case law were collected and analyzed using policy analysis methods. To address the second research question, I reviewed public school disciplinary policies from the State of California's Department of Education, the Special Education Local Plan Area (SELPA), and the local high school district's Board of Education websites. Additionally, I examined data regarding the number of disciplinary procedures, specifically suspensions and expulsions that had been reported in the local high school district described below.

**Data Sources**

Many of the articles and research papers I reviewed were accessed from the ERIC data base through the California State University Channel Islands electronic library system.[5]

Information regarding a number of court cases was accessed from the Find-a-Case website on the Internet[6], and from LexisNexis Academic Universe.[7] I retrieved additional articles and information, including congressional reports and the text of the 1997 and 2004 IDEA reauthorizations from the World Wide Web using the Google search engine. Additionally, as a member of the Council for Exceptional Children (CEC), I accessed an online document through the organization's website where it compared the text of the 1997 and 2004 reauthorizations of the IDEA.[8]

Publicly available national data regarding numbers of disciplinary procedures in public schools was located at the National Center for Education Statistic's, (NCES) School Survey on Crime and Safety, (SSOCS) which can be found through the United States Department of Education website,[9] and from the National Office for Special Education's (OSEP), Data Accountability website.[10] Publicly available local and state data were found through the California Department of Education's *Safe and Healthy Kids* program website.[11] Information regarding whether or not students subject to disciplinary procedures are students with disabilities

[5] http://web.ebscohost.com.summit.csuci.edu:2048/ehost/search/advanced?hid=7&sid=89cbf703-2d3e-405e- bef2-60d64406bc02%40sessionmgr11&vid=1
[6] http://va.findacase.com
[7] http://www.lexisnexis.com.summit.csuci.edu:2048/hottopics/lnacademic/?
[8] http://www.cec.sped.org
[9] http://nces.ed.gov/surveys/ssocs/
[10] https://www.ideadata.org/default.asp

[11] http://dq.cde.ca.gov/dataquest/

is being compiled and reported, but due to confidentiality issues is not publicly available, and consequently not included in this study.

In addition to the abovementioned sources, legislative histories were included (Egnor, 2003; Itkonen, 2009), and data were triangulated against conceptual frameworks (Kingdon, 1995; Wilson, 1989).

**Procedure**

I began this study by searching for articles about special education disciplinary policy on the ERIC database and on the World Wide Web. From those articles, I was able to determine which legislation and particular court cases were pertinent to my research, primarily because they were repeatedly referred to in a number of the articles I studied. I then investigated these pertinent court cases individually through the World Wide Web, using the Google search engine and the LexisNexis Academic Universe. The website Find-A-Case[12] on the Google search engine was particularly helpful as it provided specific information regarding the individual cases I was investigating. Additionally, Google Scholar was useful as it provided a myriad of links to other scholarly articles related to the case and the topic. [13] Document data from all sources was informally coded (using colored tape), and compared for consistency. (Due to the scope of the project I did not have an independent coder for reliability.) Information regarding legislation and court proceedings was arranged in chronological order and entered on a timeline. Using critical read and analysis, I then compared the information I collected with theories of policy making (Kingdon, 1995; Itkonen, 2009) and bureaucracies (Wilson, 1989) in order to determine what forces over time were responsible for the creation of the current disciplinary policy and regulations for special education students.

[12] http://findacase.com/

[13] http://www.google.com/search?client=firefox-a&rls=org.mozilla%3Aen-US%3Aofficial&channel=s&hl=en&source=hp&biw=1280&bih=831&q=google+scholar&btnG=Google+Search

Quantitative data regarding numbers of disciplinary actions (suspensions and expulsions), from national, state and local sources was located in the form of data tables. This information was examined in order to determine what type of information was being compiled, by whom, and for what purpose.

**Setting**

In order to determine how special education discipline policy and regulations have defined practice at the local level, I investigated practices within a county and a school district located in southern California. The county is bordered on the south by the Pacific Ocean and on the north by a rugged and inaccessible mountainous area. The population is estimated to be about 813,000 and is ranked as the 6th wealthiest counties in the state. The median family income was $66,900.00 in 2005, according to an updated census; however, 9.2% of the population lives below the poverty line. Close to one third of the residents are Latino and 26% speak Spanish as a first language.[14]

There are 21 public school districts, under the auspices of the County Office of Education, with a kindergarten to 12th grade student population that currently exceeds 140,000.[15] The district under study is a City High School District within the County, comprised of 6 comprehensive high schools, one continuation school, and one adult education facility. For the purposes of this study, I will refer to the district as *City District,* the comprehensive high schools as *High Schools 1-6,* and the continuation school as *High School C.*

The County Office of Education's Special Education department provides special education services to the 21 districts in the county, operating 68 special day classes at 22 different sites. The department serves students on the autism spectrum as well as those with

[14] http://wikipedia.org/wiki/Ventura_County,_California
[15] http://www.vcoe.org

emotional disturbances and developmental delays. Each special education student has an Individualized Education Plan, (IEP), developed by a team, including the parent or guardian. Additionally the county provides speech and occupational therapy, and vision, nursing and psychological services where needed. The county also operates a number of special community schools to provide services for students with and without disabilities. One of the special schools provides services for students identified as having emotional disturbances, (ED). Another community school provides recovery programs related to substance abuse, anger management issues, emotional problems and credit recovery for students with and without disabilities who are referred from their home schools. The County's Juvenile Justice Center, houses another community school which serves students with and without disabilities who have been remanded to custody. At the juvenile justice school students can earn academic credit which is fully transferable to comprehensive, continuation, and community schools upon their release.[16]

The Special Education Local Plan Area, (SELPA), is the organization responsible for the implementation of the county's Special Education Local Plan, and in insuring a free and appropriate public education to students identified as having disabilities according to the Individuals with Disabilities Act PL 108-446, (IDEA 2004). The SELPA serves over 16,000 students with disabilities in the county's 21 districts. The SELPA also provides information and training opportunities on positive behavioral support techniques and applied behavioral analysis.[17]

Additionally, located within the county, are three community colleges, a newly established California State University, a campus of the University of California, and an independent 4-year liberal arts and graduate institution.

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[16] http://www.vcoe.org/Default.aspx?
[17] http://www.venturacountyselpa.com

**Summary**

The information retrieved regarding the local level implementation of the discipline provisions in IDEA 2004 is discussed in full in Appendix C. In order to address the question of what forces and institutions created and shaped special education discipline policy, legislation and legal cases pertinent to IDEA 2004 were analyzed using critical read grounded on the theory introduced in chapter 2. These analyses are presented in chapter 4.

# Chapter 4

## Results

In this chapter I will present the results of this study. I will first discuss and analyze the forces and institutions that have shaped the Special Education discipline policy contained in the current law, IDEA 2004. I will then summarize how these policies and regulations have affected practice at the local level.

**Question 1:**

What forces and institutions created and shaped special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act?

The accompanying timelines (figures 4.1 & 4.1 cont.), depict the most significant legislative and judicial events that have led to the discipline policy contained in the present IDEA legislation. I will review these events in chronological order, to analyze and better understand the forces involved in the policy's creation.

### The Education for All Handicapped Children's Act (PL 94-142); 1975

The Education for All Handicapped Children's Act (PL 94-142), enacted by Congress in 1975, mandated that all children with disabilities be provided equal educational opportunities. This mandate was the culmination of many right-to-education lawsuits that had been brought forward by families and advocates of children with disabilities; most arguing that denying access

to public schools was a violation of due process rights under the U.S. Constitution (Itkonen, 2007). Congress had enacted legislation, P.L.91-230, the Education of the Handicapped Act (EHA) in 1970, and amended the Elementary and Secondary Education Act (ESEA) in 1974, providing assistance to states to educate children with disabilities, but these provided for a voluntary system (Egnor, 2003). And, in spite of some court victories gained by advocates of special education in the early 1970's, there was no constitutional provision providing for a 'free and appropriate education'(Itkonen, 2007). The Supreme Court, in a school finance case, *San Antonio v. Rodriguez*, 1973, had ruled that education was not a fundamental interest guaranteed by the equal protection clause of the U.S. Constitution (McCarthy 1976, Itkonen, 2007). By the mid seventies, the advocacy community, fearing defeat in the courts changed venue, and initiated appeals to Congress for definitive federal legislation on special education.

The timing was right; a policy window was open, as other significant social policies had been passed in the early seventies, such as the Child Development Act of 1971 and section 504 of the Vocational Rehabilitation Act of 1973, which forbid discrimination on the basis of disability for programs receiving federal funding (Itkonen, 2009). Limited access to education for students with disabilities was the issue pushed forward by the advocacy community in the problem stream (Kingdon, 1995). The advocacy community found support in Congress (the policy community), where Senator Williams (D-N.J.), and Senator Randolph (D, WV) and their staffs worked closely with the Council for Exceptional Children (CEC), to write the initial legislation, and Representative Miller (D-CA) was able to draft an agreeable compromise. This is consistent with Kingdon's theory on policy entrepreneurs. Senator Williams had an established record on disability issues such as accessible public transportation (Itkonen, 2009). He and Senator Randolph were able to attach a solution to the problem of access to public education for

children with disabilities and Representative Miller (D, CA.), was able to overcome objections by drafting a compromise, and they were ready to push their proposal through when the time was right. President Ford was persuaded by his aides to sign the bill on November 29, 1975, enacting P.L.94-142, in spite of his concern regarding what the legislation would cost (Itkonen, 2009). The problem stream, solution stream and political stream all came together at a propitious time, (an open policy window), and policy was enacted. Although it took participants from all three 'streams' to enact the legislation the primary force behind its creation were the parents at the core of the advocacy movement, for whom the stakes were highest – the impact that access to public education would have on their children and families (Itkonen, 2007).

The enactment of PL 94-142 created many new goals or tasks for the front-line workers; the teachers and administrators in public schools who were responsible for carrying out the legislation's mandates (Wilson, 1989),. The goal of PL 94-142 was to guarantee access to a free and appropriate public education in the least restricted environment for children with disabilities. "That goal, however laudable, strained the capacity of every state's educational system" (Wilson, 1989, p.338). Teachers confront two main tasks or goals on a daily basis; to focus students' minds to produce learning, and to control students' energy to maintain order (Wilson, 1989). School officials and teachers were suddenly required to include all children with disabilities into their schools and classrooms. There were thousands of general education teachers who found themselves serving disabled students with challenging behaviors with no training, no background, and no assistance from their principal or school system (Egnor, 2003). The law guaranteed a free and appropriate education (FAPE), for students with disabilities, but did not explicitly define what that meant. Further, the law contained no provisions regarding whether or not a student with disabilities could be removed from a classroom (a denial of FAPE), if he or

she misbehaved; an example of an unclear goal. This is consistent with Wilson's theory on situational imperatives; what front-line workers or operators will do when put in the position of accomplishing goals or tasks without the resources needed to achieve those goals, especially when the goals are unclear or vague, will be shaped by circumstance (Wilson, 1989). For teachers and administrators, the behavior of their clients (misbehaving students), and the resources available to them shaped what they did; in many cases these students were suspended or expelled in spite of the stated access-to-education goal of special education legislation.

The increased level of access for students with disabilities to the general curriculum in the regular classroom setting in large part, defined the success of IDEA. When a student misbehaved in public school, he or she more often than not, received some form of detention, suspension or expulsion, resulting in removal from the classroom. Access to the regular school environment was (and is) a primary objective of IDEA, therefore, punishments that removed a student with disabilities from the classroom had a major effect on meeting the access objective (a free and appropriate education), defined in the IDEA legislation (Boothby, 2002). Unfortunately, "among the troublemakers, who were frequently suspended, expelled and pushed out of schools, were students with emotional and behavioral disorders" (Etscheidt, 2002, p. 409). When school officials whose responsibility was to maintain order in their institutions were faced with special education students who had broken school rules for which suspension or expulsion was the consequence, conflicts developed.

Although PL 94-142 contained no provisions for dealing with the discipline of children with disabilities, the law did include significant due process protections, enabling disabled students, their parents and advocates the right to due process hearings and, if not satisfied, the right to take their concerns to court (Reauthorization of IDEA: Discipline, 1995). When children

with disabilities' behavior infractions caused them to be suspended or expelled from school, their parents and advocates who had previously sought access to school for their children through Congressional legislation changed venue (Itkonen, 2009), and took their concerns to the courts. The courts were frequently asked to settle disputes arising from disciplinary actions. The court decisions established that students with disabilities had "protections against certain types of procedures" (Etscheidt, 2002, p. 408). From these lawsuits, a large body of case law developed, which subsequently shaped discipline policy (Osborne, 2001).

**The Courts; Case Law**

Federal laws are passed by Congress, and signed by the President. The judicial branch of government has the authority to decide the constitutionality of federal law and to settle disputes regarding those laws (see Appendix B). My results indicate that interested parties, in order to settle disputes arising from the unclear mandates in PL 94-142, changed venue and turned to the courts.

In 1975 the U.S. Supreme Court ruled that *all* students have the right to procedural due process before being removed from school (*Goss v. Lopez*, 1975). This suit arose from the complaint that nine students had been suspended from public school in Columbus, Ohio without a hearing. The complaint sought a declaration that the suspensions were unconstitutional in that public school administrators had deprived the plaintiffs of their rights to an education without a hearing of any kind, in violation of the procedural due process component of the Fourteenth Amendment (*Goss v. Lopez, 1975*). All students, with and without disabilities, have the right to a written or verbal explanation of the charges against them and a right to a hearing before being suspended for periods of ten days or less (O'Neil, 2005). These safeguards severely moderated

the discretionary nature of disciplinary actions previously exercised by school administrators, but did not address the needs of the students who were suspended or expelled, nor did they address issues such as placement during appeals of disciplinary action or the continuation of services for suspended or expelled students (Etscheidt, 2002).

The first court case decided under PL 94-142 involved discipline. The case, *Stuart v Nappi* (1978),[18] occurred in Connecticut where a suit was brought forward on behalf of a high school student with learning disabilities who had a history of behavioral problems and had been involved in a number of school-wide disturbances. When the school attempted to expel her, the student's attorney requested a due process hearing under the provisions outlined in PL 94-142. The attorney obtained a restraining order from the federal district court enjoining the school board to refrain from conducting a hearing to expel the student (Osborne, 2001). The court ruled that expulsion for this student would jeopardize her right to an education in the least restrictive environment. " The expulsion of handicapped children not only jeopardizes their right to an education in the least restrictive environment, but is inconsistent with the procedures established by the Handicapped Act for changing the placement of disruptive children" (*Stuart v. Nappi*, 1978). Additionally the court ruled that the school could temporarily suspend a misbehaving special education student, and change their placement as long as they followed the procedures outlined in PL 94-142 (Osborne, 2001).

A year later, the Seventh Circuit Court of Appeals introduced the idea of 'disability-related conduct' and the protections provided for students with disabilities in *Doe v. Koger* (1979). "Whether a handicapped child may be expelled because of disruptive behavior, depends on the reason for the disruptive behavior" (Etscheidt, 2002, p. 411). In this case, a federal district

[18] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19780104_0000001.dct.htm/qx

court in Indiana overturned a local Board of Education's expulsion of a mildly mentally disabled student (Osborne, 2001). The plaintiff, the mother of the disabled student who had been expelled for disruptive behavior, claimed that her son was expelled according to regular disciplinary procedures, not "in accordance with federally required placement procedures, (FAPE in the LRE), for special education students" (*Doe v. Koger*, 1982, p. 1). The court stated that schools could not expel disabled students whose disruptive conduct was caused by their disability. This rule became known as the *manifestation-of-the-disability doctrine*. The doctrine implied, however, that schools could expel a student with disabilities if the student's misconduct was not related to the student's disability (Osborne, 2001). Additionally, this court held that suspension and expulsion of students with disabilities equates to a change in placement for those students (O'Neil, 2005).

A similar dispute surfaced in the 5th Circuit Court in *S-1 v. Turlington* (1981). This court addressed the need to establish whether or not a student's misbehavior was a manifestation of his disability *before* any disciplinary action could be initiated; additionally, if a student with a disability was expelled for reasons unrelated to their disability, their special education services could not be terminated (O'Neil, 2005). In this case, several students, all identified as mildly mentally retarded had been expelled from a school in Florida for alleged misconduct. The superintendent of the district had determined that because 'S-1' (the only one of the students who pursued the case on the basis that his misconduct was a manifestation of his disability), was not classified as seriously emotionally disturbed, his misconduct could not be a manifestation of his disability. The court disagreed, stating that PL 94-142 provided all disabled children the right to a free and appropriate education. They further found that the expelled students had been denied this right in violation of 94-142 and additionally decided that no student with disabilities could

be expelled for misbehavior related to their disability. The court also found that expulsion was a change in educational placement, and that only a trained team (instead of unilateral decisions made by administrators), could make decisions regarding changes in placement (*S-1 v. Turlington*, 1981). Additionally, if this trained team found no relationship between the student's misconduct and disability and the student was expelled, the expulsion would be permissible, but there could not be a complete cessation of services (Osborne, 2001).

Even though the concept of manifestation of the disability had been established in previous court proceedings, the case, *Kaelin v. Grubbs* (1982)[19], involved a ninth grade student (Michael Kaelin), who was suspended and then expelled for disruptive behavior, in spite of the fact that the Board of Education had not addressed the relationship between Michael's disability and his disruptive behavior. The 6th Circuit Court, in this case, concluded that Michael's expulsion was a change of placement, and that the procedures used to expel Michael violated the procedures contained in P.L. 94-142 (*Kaelin v. Grubbs*, 1982). They also found that school teams would be provided an opportunity to ask whether a student's misbehavior was a 'manifestation of his disability' and whether or not the student's educational placement should be changed. The Ninth Circuit Court in *Doe v. Maher* (1986)[20], ruled similarly when they specifically addressed the need for a manifestation determination for students with emotional and behavioral disabilities (Etscheidt, 2002).

Regardless of the fact that an IEP team had determined that Jerry Malone's misconduct was not a manifestation of his disability, the Fourth Circuit Court's decision in *School Board v.*

[19] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19820709_0040723.c06.htm/qx
[20] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19860711_0040972.c09.htm/qx

*Malone* (1985)[21], illustrated that courts would sometimes, "stretch to tie a student's misconduct to a student's disability" (Osborne, 2001, p. 4). In this case, a student with a language-related disability, Jerry Malone, was involved in dealing drugs. The student was expelled when the special education team determined that the student's disability did not cause him to deal drugs. The district court found, however, that the student's disability resulted in low self-esteem, and that being involved in dealing drugs was the way the student sought peer approval. "A direct result of Jerry's learning disability is a loss of self image, an awareness of lack of peer approval occasioned by ridicule or teasing from his chronological age group. He is a ready "stooge" to be set up by peers engaged in drug trafficking" (*School Board of County Prince William v. Malone, 1985)*. This court also found that the student's learning disability prevented him from understanding the long-term consequences of his behavior. The Fourth Circuit Court upheld the district court's decision (Osborne, 2001).

The, by now, contentious issue of disciplining special education students reached the national level when, in 1988, the Supreme Court gave its first ruling on a case involving the discipline of students with disabilities. Although PL 94-142 did not contain specific disciplinary provisions, the due process provisions of the law contained what was called the stay-put provision. "The stay-put provision required that during the pendency of proceedings conducted during a due process hearing, or any due process procedure, unless the State or local educational agency and parents agree otherwise, the child will "stay-put" in the current educational placement" ( Reauthorization of IDEA: Discipline, 1995, p. 6). The stay-put provision was addressed by the Court in *Honig v. Doe* (1988). This case involved two students with emotional disturbances, who were suspended indefinitely from San Francisco public schools for violent and

[21] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19850524_0040249.c04.htm/qx

disruptive behavior related to their disabilities, pending the completion of expulsion proceedings (Itkonen, 2009). The school district argued that schools shouldn't be required to return students to their current educational environments while awaiting an appeal. The District Judge permanently enjoined the school district from taking any disciplinary action other than a 2-5 day suspension against a student for disability-related conduct, or from effecting a change of placement without parental consent, pending the completion of due process hearings. The Ninth Circuit Court affirmed the District Judge's orders (*Honig v. Doe*, 1988). Bill Honig, California's Superintendent of Public Instruction, petitioned the Supreme Court, asking them to recognize a dangerous exception to the stay-put provision. The Court, however, refused to establish a dangerous exception to the stay-put provision. Instead they concluded that, "Congress very much meant to strip the schools of the unilateral authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students from school" (Etscheidt, 2002, p. 412). For students who are considered truly dangerous or when maintaining the current placement is "substantially likely to result in injury either to the student or others, schools may seek an injunction from the courts (a *Honig* injunction), to exclude the student from the attending school" (O'Neil, 2005, p. 5).

Although the Supreme Court decision in *Honig v Doe* clarified some issues regarding the discipline of students in special education; litigation continued. The Courts' decisions made it clear that students with disabilities could not be expelled for behaviors related to their disabilities; however they also indicated that other normal disciplinary actions, like short-term suspensions, could be used as long as they did not involve a change of placement (Osborne, 2001). The Supreme Court, in the *Honig* decision did allow suspensions for up to 10 days, which was envisioned as a cooling-off period allowing school officials and parents time to work

together to find a different appropriate placement, if necessary. The decision also gave school officials the right to seek a court injunction to remove a student who they considered dangerous or seriously disruptive during the pendency of administrative and judicial proceedings, if the parents and school officials could not reach an agreement during the 10-day cooling-off period. The burden of proving that a student was truly dangerous, and that removal of the student from his or her current placement was the only viable option, was left to school officials (Osborne, 2001). This 'burden' provides another example of Wilson's operators, or front line workers, facing situational imperatives. Situational imperatives may have their greatest effect on how operators define their tasks when the organizations must cope with uncooperative or threatening clients face-to-face (Wilson, 1989). Teachers and administrators not only had to maintain order so that learning could continue in the classroom, they had to be able to prove that an uncooperative or threatening student was *truly* dangerous in order to remove them from their current placement, and to do that, they had to go to court to seek an injunction.

After the *Honig* decision, several cases were heard involving school districts seeking *Honig* injunctions. District courts in Virginia, Illinois, and New York, issued injunctions when the schools were able to adequately show that returning a student to school was likely to endanger other students (Osborne, 2001). A district court in Missouri, however, refused to issue an injunction against a student who had thrown furniture, repeatedly exploded in anger and injured another student, because, they said, "these facts were not sufficient to establish that serious personal injury would likely occur if the student remained at school" (Osborne, 2001, p.7). In the lawsuits seeking *Honig* injunctions it was the responsibility of the schools to provide the evidence that maintaining a student in his or her current placement would present a danger to the student or to others. In some of these cases, the courts issued injunctions; in other cases the

courts claimed that the schools had not adequately proved that returning a student to his current placement was likely to endanger other students. Some of the courts ordered alternative placements; others did not (Osborne, 2001).

Another significant issue developed in the post-*Honig* era; the issue of whether or not a student who had not yet been identified as eligible for special education services was entitled to IDEA protections if the student claimed to be disabled. The Ninth Circuit Court, in *Hacienda La Puente School District v. Honig* (1992)[22], held that all students with disabilities, even if not previously identified as disabled, were entitled to procedural protections under IDEA (Osborne, 2001). Similarly, a California federal district court in *M.P. v. Governing Board* (1994) (Osborne, 2001), found that the procedural safeguards of IDEA should be applied whether or not a student had been diagnosed previously with a disability. The court recognized that a student could attempt to be labeled disabled in order to gain the benefits of the IDEA, but stated that the Act did not address this possibility (Osborne, 2001).

Other cases during the post-*Honig* era, involved issues regarding whether or not students who had previously been identified as eligible for special education services, but were not currently receiving services, were eligible for protections under IDEA; and whether or not a student who had not been found eligible for services, but whose parents contested the decision were eligible for protection under the Act (Osborne, 2001). A Wisconsin federal district court in *Steldt v. School Board* (1995)[23] ruled that such a student was entitled to IDEA protection especially if the request to remove the student from special education classes came from a parent. In this case the parent's request to remove the student from special education was against the recommendation of the student's teacher. The court held that the parent's request to remove her

[22] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19920928_0042024.c09.htm/qx
[23] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19950103_0000001.wwi.htm/qx

child from special education services did not change the student's status as a child with disabilities, and therefore the student was entitled to IDEA protections (Osborne, 2001).

The Supreme Court's *Honig* decision stated that a special-education student could be suspended for up to 10 days, but did not specify whether the 10-day limit was consecutive or cumulative. This issue sparked more court cases which added to the confusion. The Ninth Circuit court in *Parents of Student W v. Puyallup School District* (1994)[24] ruled that the Supreme Court's ruling did not support the claim that the ten-day limit referred to ten total days, and that the school district's suspension policy where each suspension triggered an evaluation to determine if the student were receiving an appropriate education were lawful (Osborne, 2001). However, a New Hampshire federal district court in *Manchester School District v. Charles* (Osborne, 2001), found cumulative suspensions totaling more than ten days constituted a change in placement.

Still other cases came up during this period involving whether or not a school district was obliged to provide alternative educational services to students with disabilities who were being suspended or expelled for infractions not related to their disabilities. Courts also disagreed on this issue. In 1992, the state of Virginia submitted its three-year plan for special education to the U.S. Department of Education. Included in their plan was the stipulation that students with disabilities could be disciplined in the same manner as students without disabilities if the students' behaviors were not a manifestation of their disabilities. The Department of Education responded by stating that Virginia could not discontinue services to expelled special education students, but the Virginia department of education did not change their regulations. After considerable litigation, the Fourth Circuit Court ruled that school districts were not required to

[24] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19940817_0041561.c09.htm/qx

provide educational services to disabled students who had forfeited the right to a free and appropriate education by willfully engaging in conduct so serious as to warrant expulsion (Osborne, 2001). Several months later a district court ruled similarly in a case, *Doe v. Board of Education* (1997)[25] which involved a student in possession of marijuana, stating that the school was not required to provide alternative educational services during the expulsion. The Seventh Circuit court agreed stating that, "holding the IDEA was not intended to shield special education students from the usual consequences of misconduct when that misconduct was not related to their disabilities" (Osborne, 2001, p. 9). In contrast, during the same time period an Arizona district court in *Magyar v. Tucson Unified School District* (1997),[26] a case involving a student with disabilities who had brought an assault-style knife to school and had been expelled without services, ruled that IDEA required school districts to provide all students with disabilities an appropriate education, and did not include an exception for misbehaving students (*Maygar v. Tucson Unified School District* (1997), Osborne, 2001).

Although the courts did clear up some concerns, and provided some specific provisions regarding the discipline of special education students, multiple and sometimes conflicting interpretations by those courts continued to cause confusion for those responsible for implementing the law. Decisions handed down by the courts were responsible for the concepts of disability-related conduct and manifestation determinations, the use of trained teams to make decisions, the determination of what constitutes a change-in-placement, the mandating of continued services during suspensions and expulsions, and provisions regarding the stay-put provision, among others. Disciplining students with disabilities, however, remained a very confusing issue for most school administrators and teachers, (Yell & Rozalski, 2008).

[25] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19970527_0000276.c07.htm/q
[26] http://va.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19970313_0000004.daz.htm/qx

Advocates who wanted access to public school for students with disabilities had started in the courts, (e.g. *Mills v. Board of Education, 1972)* prior to changing venue (Itkonen, 2009), and appealing to Congress for definitive legislation on special education in the early 1970's. Their legislative victory granted that access, along with due-process rights and the stay-put provision. When teachers and administrators at the local level (Wilson's operators), faced situational imperatives in the form of misbehaving students, some of those operators defined their responsibilities as protecting the public good, and students with disabilities were subsequently suspended or expelled. Advocates found themselves changing venue again, returning to the courts in order to resolve issues regarding unclear legislative mandates. Some of those subsequent court decisions appeared to be in conflict. In spite of the recycling of this policy issue, through the courts, to Congress, and back to the courts, the matter of how to discipline students with disabilities remained confusing and contentious. As such, the issue remained in the problem stream described by Kingdon (1985), as no agreed upon, definitive solution had been reached. I will next examine the state and federal level responses to the case law.

**At the State and Federal Level**

While advocates were pursuing policy clarity in the courts, state and federal legislators were also addressing the issue of discipline for students with disabilities. Policy windows may open by the occurrence of compelling problems or events (Kingdon, 1995), and this can happen in state, as well as in national policy creation. In California, the death of a child in a private facility during a behavioral intervention in 1987 was the impetus behind the passage of the Hughes Bill in 1990. Before the passage of the Hughes bill, California had left the use of

aversive procedures up to professionals (Brock, 2011). Attempts had been made in California, to address the use of aversive procedures used to control behaviors in educational settings, and draft guidelines had been written prior to 1990 (Brock, 2011). Since the federal law did not include language relating to discipline, and case law was piecemeal, the death of this child became the focusing event that permitted the political, problem and solution streams (Kingdon, 1995), to come together in California. The child's death prompted anti-aversion legislation that ultimately led to the passage of the Hughes Bill which insures the right of special education students, when necessary, to have functional behavioral assessments and positive behavioral intervention plans included in their IEPs. This concept became an important component in the discipline amendments included in the 1997 and 2004 reauthorizations of IDEA, and provides an example of how state policy can precede federal policy.

At the same time the Hughes bill was being written in California, focusing events (Kingdon, 1995), were prompting the 103rd Congress to deal with the issue of discipline in schools at a national level. Responding to the increased violence among juveniles sensationalized by the media during the early 1990's, Congress passed the Gun-Free Schools Act in 1994; another example of a policy window opening by the occurrence of compelling problems or events. "During the early and mid 1990s, America became galvanized by specters of violence in our society" (Egnor, 2003, p.49). Congressional pollsters had found that the issue of school safety had surpassed school quality as the public's primary concern (Egnor, 2003). Violence in the schools was the issue in the problem stream. In the solution stream, Congress, in order to allay the concerns of their constituents, included the gun-free schools provision, as part of the Goals 2000, Educate America Act of 1994. As an amendment to the Elementary and Secondary Education Act of 1965 (ESEA), the act required all schools to enact a zero-tolerance policy,

mandating a one-year expulsion for any student who was determined to have brought a gun to school.

The act did not, however, specifically address the question of expulsion of special education students who were protected under IDEA's stay-put policy, even though it allowed district superintendents to modify the year-long expulsion requirement on a case-by-case basis (Egnor, 2003). In the political stream, the administration was *not* supportive of a parent's ability to evoke stay-put in a situation where a child with disabilities brought a weapon to school (Egnor, 2003). As a result another policy window was opened, allowing Senator Gorton (R-WA.), to attach a solution to the problem by introducing a further amendment to ESEA, which permitted school officials to unilaterally move a student with disabilities to an alternate educational facility for 90 days if they brought a weapon to school. Although Senator Gorton's bill passed the Senate, key senators who supported disability rights, Senators Kennedy (D-MA.), Harkin (D-IA.), and Jeffords (R-VT.), opposed Gorton's amendment. They offered a compromise amendment allowing school officials to place a student with disabilities who brought a gun to school, in an alternative educational setting for up to 45 days. Senator's Gorton, Kennedy, Harkin, and Jeffords' participation in preparing this compromise amendment is again consistent with Kingdon's (1995) theory on policy entrepreneurs. Senator Gorton was interested in assuring that the stay-put provision would not prevent school authorities from removing a student with disabilities from school if he or she were in possession of a gun. Senator's Kennedy, Harkin and Jeffords (all three who had family members with disabilities), willing to devote their energy and reputations to promote disability rights were ready at this open policy window to redraft Senator Gorton's proposal by attaching a compromise solution to the problem of how to deal with students with disabilities under the Guns-Free School Act. The Gorton-Jeffords'

Amendment was signed into law in October of 1994, becoming the first discipline amendment to IDEA. Many felt that the passage of the Gorton-Jeffords' amendment set the precedent to further amend the stay-put provision during the subsequent reauthorization of IDEA in the 104th Congress (Egnor, 2003).

**IDEA Revisited, 1995-1997**

When a program comes up for reauthorization in Congress, a policy window is automatically opened. Reauthorization of a program, according to Kingdon, can simply be a routine extension. It can, however, also involve substantial revision, serious questioning, or even abolition of the program (Kingdon, 1995). The predictability of the reauthorization process allows interest groups, bureaucrats, policy entrepreneurs, and others to accumulate possible amendments, changes, and proposals in anticipation of the opportunity to bring their ideas forward and push their proposals. The bureaucrats, interest groups and policy entrepreneurs need to be ready when the time for renewal comes (Kingdon, 1995).

When the IDEA reauthorization process started during the 104th Congress in 1995, it did not turn out to be a 'routine extension'. Politicians, bureaucrats, and disability and general education advocacy groups again changed venue (Itkonen, 2009); leaving the courts, they headed for Washington DC and Congress prepared with their recommendations, proposals, and divergent points of view. The reauthorization did not proceed smoothly. The process, beginning in1994, "extended over three years and two Congresses" (Itkonen, 2009, p. 15). Disability advocacy groups wanted to ensure the due process rights for their students and maintain the stay-put provision. Groups representing administrators and teachers in general education objected to

what they perceived as a 'double standard' in disciplining children; many particularly objected to the mandated continuation of educational services for children with disabilities whose behaviors had caused them to be suspended or expelled. School administrators claimed they were unable to remove dangerous and seriously disruptive students from their current educational settings without following expensive and time consuming due process procedures under IDEA (Egnor, 2003), while disability advocates and their supporters, concurring with Supreme Court decision in *Honig v. Doe* (1988), believed that IDEA did not hamper school officials in the exercise of maintaining a school environment that is safe and conductive to learning.

In his book, *IDEA Reauthorization and the Student Discipline Controversy,* David Egnor (2003), presents, through interviews with policy makers and stakeholders, a number of underlying reasons why the issue of discipline for students with disabilities became so controversial. The origins of the controversy started before the enactment of P.L.94-142, when state statutes allowed for the exclusion of children with disabilities from attending public schools; many children with disabilities were denied access to public education if they were considered 'too disruptive' or 'unruly' (Egnor, 2003). In the seminal case that led to the enactment of P.L.94-142, *Mills v. Board of Education* (1972)[27], discipline was the justification for segregating children with disabilities. By the beginning of the 1990's most disability and general education advocates agreed that the discipline controversy was, "symptomatic of larger institutional and professional problems within general education and special education, and that it was a confluence of factors… that led to the discipline controversy" (Egnor, 2003, p.22). The individuals interviewed were 'elite policy stakeholders' (Kingdon's policy entrepreneurs), who were participants in the discipline debate, including advocates from the Association of Retarded

[27] http://www.faculty.piercelaw.edu/redfield/library/case-mills.boe.htm

Citizens (ARC), the Council for Exceptional Children (CEC), the National Parent Network on Disabilities (NPND), the National Down Syndrome Society (NDSS), the National Easter Seals Society (NESS), the National Education Association (NEA), the American Association of School Administrators (AASA), and the National School Board Administration (NSBA). Among the factors cited by these stakeholders were issues involving funding for special education, parental advocacy and the IEP process, the trend toward inclusive education and teacher training, student diversity, and ignorance toward people with disabilities. Additionally, advocates cited the media's 'sensationalization' of discipline problems in schools, 'conflicting federal education requirements', and local school district politics (Egnor, 2003).

The federal government's contribution to the cost of implementing Special Education programs, although increasing, was not nearly sufficient in the 1990's, resulting in local educational agencies picking up the related expenses. School districts needed to spend a higher percentage of their budgets in order to meet the requirements of IDEA, causing resentment among school personnel, (Wilson's front-line operators), and parents of students without disabilities (Egnor, 2003). Costs involved with litigation were high as well as costs for a number of related services. One disability advocate stated, "They, (Congress), knew it was a problem, but they didn't do anything about it. It was a problem, particularly in small towns...where a child's need for special education in a small school system ate up half the school money, which then fell back to the tax burden on the town, which then caused the town to be very upset with the kid and the child's family" (Egnor, 2003, p.24).

Some advocates complained about the IEP process becoming a venue for parents and advocates to push through certain expensive programs or methodologies they wanted in order to address their children's behavior, that were expensive or required a major systems-change effort

before their school system could implement it, placing parents and education professionals in adversarial positions (Egnor, 2003), an example of Wilson's (1989), front-line workers coming to grips with situational imperatives. The law required school teams consisting of the student's parents, special and general education teachers, an administrator and other specialists as necessary, to develop an individualized education plan, or IEP. These plans could be shaped and enforced by going to court, if a parent or advocate disagreed with a team's decisions regarding their child (Wilson, 1989). In effect, these front-line workers were making policy by interpreting legislation based on the situation they faced; e.g., were the parents hostile or compliant, was there an attorney or legal advocate present, was this situation going to end up in due process, or not?

One general education advocate believed that the discipline controversy was a, "backlash against increasing numbers of parents and students seeking to inoculate themselves against appropriate disciplinary actions by invoking the protections under IDEA's stay-put provision", stating that he had heard, throughout the country, from liberal and conservative school people, that kids would say, "I'm a special-ed kid. You can't touch me" (Egnor, 2003, p.27). This advocate had also heard that parents were claiming their child had a disability, or an unidentified disability and they couldn't be punished for their misbehavior...and that kids and parents had learned to abuse the system, and that this had become widespread (Egnor, 2003).

Other general education and disability advocates blamed the discipline controversy, in part, on a 'growing backlash' against inclusion. Children with challenging behaviors were being included in general education classrooms without adequate teacher training or support, "you have thousands of general ed. teachers who have found themselves serving disabled students with challenging behaviors with no training, no background, and no assistance from their

principal or their school system" (Egnor, 2003, p. 30). Rules have consequences, and when there is a disparity between the legal rules, like those contained in IDEA, and bureaucratic realities, (situations found in school classrooms), the rules often get subverted (Wilson, 1989). Teachers, struggling to find the time and energy to complete their daily tasks, often would neglect referring potentially eligible students to the special-education program, or conversely, the referrals they did make would be on the basis of which student was causing the most disruption in the classroom (Wilson, 1989); this is also consistent with Wilson's theory of front-line workers, or operators, facing situational imperatives by being put in the position of accomplishing goals without the resources needed to achieve those goals.

Some of the advocates talked about increasing student diversity in public schools as a factor in the discipline controversy; that in some cases schools had responded by placing children from different cultural backgrounds for reasons other than disability in special education classes. When the inclusion movement brought many of these children back into the mainstream, general educators were not prepared to meet their needs (Egnor, 2003). Other advocates thought bigotry and ignorance toward people with disabilities and racism played a role. Still others placed part of the blame for the discipline controversy on educational reform, Goals 2000, and the implementation of the standards-based school reform initiatives. Because these initiatives focused on performance, special education and other at-risk students began to be seen as a liability in terms of schools achieving higher average test scores, culminating in a growing resentment toward special education students (Egnor, 2003).

Whatever the underlying reason, the 104th Congress, in spite of months of intense debate was not able to come to a consensus on an IDEA reauthorization bill as they had in the past; primarily due to the controversy surrounding the discipline policy. At one point during the

debates, in response to a Senate Republican bill that, "substantially scaled back the guarantees of IDEA" (Egnor, 2003, p. 81), disability advocates enlisted the help of national and state disability groups, and grassroots disability organizations. These groups coordinated a systematic and sustained phone call and letter writing campaign to convince committee Republicans that it would be politically unwise to pursue policies that diminished the guarantees of IDEA. Republican committee members' communication lines were inundated with hundreds of phone calls and faxes, a strategy which proved highly effective in the short term (Egnor, 2003). Although the phone call and letter writing campaign did protect IDEA from some of the damaging amendments proposed by Republican committee members, the strategy also added to the distrust the committee Republicans felt toward the disability community and increased the animosity between committee staffers involved in the IDEA reauthorization process (Egnor, 2003).

It is not possible to fully describe what happened during the 104th Congress in regards to the reauthorization of IDEA within the scope of this paper; however the process included a Senate discipline hearing, a Senate consensus process, a House consensus process which led to the passage of a reauthorization bill in the House, and a return of the discipline debate to the Senate, all without coming to a final consensus (Egnor, 2003). Ultimately, a statement was released to the press reporting that there was not sufficient time remaining in the 104th Congress, and IDEA reauthorization was postponed (Egnor, 2003).

When the 105th Congress began in 1996, it was again hoped that bipartisan support could be gained for the reauthorization of IDEA. The Senate majority leader's chief of staff, David Hoppe (the father of a child with Down syndrome, and as such a distinctive policy entrepreneur), encouraged members of the House and Senate committees responsible for IDEA, to delay action

on the bill allowing time for a unique, consensus–building approach. Mr. Hoppe arranged a bipartisan, bicameral working group consisting of many of the congressional staff members and administration officials who had participated in the 104th Congress' attempt to reauthorize IDEA (Egnor, 2003) and arranged the series of town-hall meetings described in chapter 2. The hope was to achieve a level of trust so that consensus could be reached on a final reauthorization bill (Egnor, 2003).

Consensus was finally reached, and the 105th Congress reauthorized IDEA in 1997 with the inclusion of the discipline amendments that are described in chapter two. The amendments codified the regulations that had come about from numerous court proceedings and the resultant case law. The discipline amendments were thought to have been well thought out; a careful balance between local education agencies' duty to provide safe school environments that are conductive to learning, with their obligation to ensure that children with disabilities receive a free and appropriate education.

**The Debate over Discipline Policy Continues**

Congress had described the 1997 amendments to the IDEA disciplinary procedures as a careful balance; however, it was not long before amendments to change the provisions began to surface (Jones, 1/2001). "In the few short years since these amendments were enacted a firestorm of controversy had surrounded their shortcomings. Parents of the disabled and non-disabled alike have voiced great concern over the inadequacies of the current law, and the danger it poses for all affected" (Boothby, 2002, p. 2). In the 106th Congress, Senators and Congressmen proposed new amendments in their respective houses hoping to overturn what they saw as an unfair double-standard that IDEA set with respect to discipline. Proponents of the

amendments were, no doubt, disappointed by what they perceived as a defeat in the previous Congress and bolstered by the close vote on Senator Gorton's amendment (which had been tabled), shortly before IDEA 1997 had passed. They hoped that the focusing event of the Columbine High School massacre in April, 1999 would bring the problem and political streams together (Kingdon, 1995), thereby opening a window wherein they could insert their own solution; changing IDEA to allow school officials more control over discipline. Opponents of the proposed legislation argued that the 1997 amendments to IDEA regarding discipline had been carefully crafted, and that the result of the proposed amendments would actually be more criminal behavior, by depriving children with disabilities who had committed behavioral infractions, of supervision and educational services (Jones, 1/2001). None of the amendments proposed in the 106th Congress passed, however they were the subject of emotional debate (Jones, 1/2001).

The issue regarding disciplinary procedures surfaced again during the 107th Congress. Representative Norwood (R-GA), sponsored an amendment to the No Child Left Behind Act of 2001, which he described as allowing students with disabilities to be disciplined under the same policy as non-special needs students in the exact same situation, essentially eliminating the provision of educational services to students with disabilities who have been suspended or expelled for actions involving weapons or drugs (Jones, 6/2001). Representatives who supported Norwood's amendment argued that they were not attempting to deny disabled students the right to be educated, that it was simply, "a matter of safety in schools and order in schools and discipline in schools" (Jones, 6/2001 p. 4). Representatives who opposed Norwood's amendment argued that children with disabilities needed to be treated differently because of their disabilities, and that if these children's' educational services were to be stopped it would be extremely

difficult for them to catch up. Arguments were also made citing some examples of expelled students who had committed serious infractions outside of school; that removing children with disabilities from school without educational services, can lead to additional juvenile crime. Additionally, it was argued, that, "hearings on youth crime had shown there was a strong link between dropping out of school and subsequent crime with even higher correlations for children with disabilities, and that putting such children on the street was a danger to the public" (Jones, 6/2001 p. 4). In the Senate, Senator Sessions (R-AL), offered an amendment, similar to Representative Norwood's. Senator Sessions read from a number of letters from school administrators, teachers and students, (Wilson's [1989], front-line operators); which recounted a variety of situations where children with disabilities were disrupting classrooms and not receiving appropriate discipline; he described his amendment during the Senate debate as a, "modest attempt to improve the situation" (Jones, 6/2001, p. 5). Senators Kennedy and Harkin (both disability advocate entrepreneurs), argued against the Session's amendment, citing that there was, "no data to support the contention that IDEA's requirements made imposing school discipline onerous" (Jones, 6/2001p. 6). Several other Senators joined Kennedy and Harkin because they felt the issue could be more carefully examined during the next reauthorization of IDEA.

Although Congress chose to delay any change in the discipline provisions until the next reauthorization of the Act, they did decide that they needed to get some data from public school administrators and teachers – Wilson's (1989) front-line operators. Congress directed the General Accounting Office (GAO), to conduct a study to determine how the 1997 discipline amendments to IDEA affected the ability of the schools to maintain a safe environment conductive to learning (Shaul, 2001). The Department of Education did not issue their final

regulations to guide the implementation of the 1997 IDEA discipline amendments until 1999, and the GAO study did not take place until those regulations had been in place for at least a significant portion of that school year. The study was intended to: 1) determine the incidence and impact of serious student misconduct (drugs, weapons, assaults), on schools, and whether or not the impact was primarily attributable to students with disabilities or general education students, and, 2) determine whether students with disabilities who engaged in serious misconduct were being treated differently than students without disabilities and, if so, how?, and 3) what was the role that IDEA played in schools' ability to discipline students with disabilities who engaged in serious misconduct (Shaul, 2001).

The study attempted to survey 465 public middle and high schools principals, with a response rate of about 60%. From the 272 responding schools, the authors of the survey believed that the data they collected provided information not previously available from any other source regarding IDEA's impact on school discipline. Results of the study indicated that students in special education who were involved in serious misconduct were being disciplined in a manner generally similar to regular education students, and that, according to the principals surveyed, IDEA played a limited role in their ability to properly discipline students with disabilities. Further, the study indicated that principals generally found that their schools' special education discipline policy had a positive or neutral effect on school safety. Additionally it was found that many local discipline policies provided protections for students with disabilities in addition to those included in IDEA (Shaul, 2001). Although limited, this study did provide some previously unavailable data regarding the discipline of special education students before the 2004 reauthorization.

**Discipline Language Revised, 2004**

Another of Kingdon's (1995), predictable policy window opened in 2004 when IDEA, once again, came up for reauthorization in Congress. The Individuals with Disabilities Education Improvement Act (P.L. 108-446), a major revision and reauthorization, was signed into law on December 3, 2004 by President George Bush (Apling & Jones, 2005). The basic structure and civil rights guarantees were maintained in the reauthorized IDEA however there were significant changes made, mostly in order to align IDEA with the No Child Left Behind Act, which had been passed by Congress in 2001. Changes made to IDEA in 2004 included, among others, definitions of 'highly-qualified' teachers, state performance goals and requirements for children with disabilities' participation in local and state assessments (all conditions that significantly impacted front-line operators), changes in private school provisions, changes in procedural safeguards, and changes in compliance monitoring focusing on student performance (Apling & Jones 2005).

Disciplinary provisions relating to children with disabilities remained a contentious issue during the 2004 reauthorization. School and teacher advocacy groups, representing many of Wilson's (1989) front-line operators, continued to argue that discipline provisions should be the same for students with and without disabilities, and that IDEA provisions regarding discipline produced a burden of too much paperwork (Apling & Jones, 2005). Disability advocates continued to argue that IDEA had been originally enacted, in part, to prevent schools from unilaterally denying services to students with disabilities when they misbehaved; that children with disabilities should not be punished for behaviors related to their disabilities, and that due

process procedures were necessary in order to prevent a denial of services. Although the 2004 reauthorization did make some significant changes to the disciplinary policy, many of the provisions were kept from the previous law reauthorized in 1997 (Apling & Jones, 2005). In spite of pressure to eliminate what many school officials and their advocates considered a double-standard, and to establish a uniform disciplinary code for all students, students with disabilities retained their rights to due-process and the right to continued services if a change in placement was necessary.

A notable change in the 2004 reauthorized IDEA was the addition of a mandatory 'resolution session' which is a meeting with the LEA, IEP team and parents. The resolution session was intended to improve the communication between parents and school officials and to resolve disputes in a timely manner in the best interests of the child, before resorting to the more adversarial due-process hearing (Apling & Jones, 2005). In addition to the resolution sessions the 2004 law allowed school personnel to consider 'any unique circumstances' on a case-by-case basis when determining whether or not to order a change of placement for a child with a disability who had violated a code of student. Congress maintained the manifestation determination in the 2004 law, but attempted to simplify it and clarify its application (Apling & Jones, 2005). Inappropriate behavior was considered to be a manifestation of a child's disability only if the LEA had failed to properly implement a student's IEP, or if conduct in question was caused by or had a *direct* and *substantial* relationship to the child's disability, essentially eliminating the concept of 'stretching-to-tie' a student's misconduct to their disability, a decision previously handed down by the Fourth Circuit Court in *School Board v. Malone* (1985). Other changes in the law included; a change in the number of days a student could be remanded to an interim alternative educational setting, an addition of serious bodily injury to the possession of a

weapon or illegal drugs as a justification for expulsion, a delineation of the authority of a hearing officer, and a modification of the stay-put provision during due-process appeals. These and other changes are included in Chapter 2 which contains a full account of the discipline policy for students with disabilities as contained in the 2004 reauthorization of IDEA.

In a statement to his colleagues in Congress, urging them to support the reauthorization of IDEA in 2004, Senator Kennedy (D-MA) acknowledged that the bill involved changes in IDEA law, changes which he knew would cause "uncertainty and anxiety" for many parents especially when it came to the proposed new discipline procedures. Most parents, Kennedy stated, preferred the sure protections of the 1997 law, however, he believed that a workable compromise had been reached. Let us work together, said Kennedy, to ensure that this bill is implemented fairly, and with the interest of your children first in mind. "And, under no circumstances should any disabled child ever be punished for behavior that is caused by their disability" (Kennedy, 2004, p.1).

**Summary**

A continuing confluence of forces shaped special education discipline policy as contained in the 2004 Individuals with Disabilities Education Act. The current IDEA discipline policy has evolved over time and is the result of several years of controversy, debate, and compromise. Institutions involved in the creation of the policy include the United States Congress, both the Senate and the House of Representatives and their staffs, federal courts including district courts, circuit courts and the United States Supreme Court, and the US Department of Education. Additionally, State governments and State and Local Educational Agencies, including schools and school boards were active participants in both the policy's creation and implementation.

Many special interest groups on both sides of the issue and their representatives were involved in the policy's creation. In addition, the willingness of individuals on both sides of the debate to share their expertise, remain persistent in the face of opposition, take advantage of open policy windows, and to change venue when necessary all played a part in the policy's creation. Finally, the primary force that shaped the discipline policy was the intense desire on the part of parents and advocates of children with disabilities to insure access to a free and appropriate education for their children coupled with need on the part of school administrators and teachers to provide a safe and secure learning environment so that teachers can teach and children can learn.

I will next present an analysis of the implementation at the local level, of the aforementioned policies.

**Question # 2:**

How have the IDEA discipline policy and resultant regulations defined and affected practice at the local level?

The Individuals with Disabilities Education Act (IDEA), is both a civil rights statute and a grant statute (Reauthorization of the IDEA, July 11, 1995). As a grant statute, IDEA attaches many specific conditions to the receipt of federal funds, including complying with the discipline regulations contained in the statute. Within each state, the state educational agency is responsible for administering IDEA and distributing the funds for special education programs (IDEA/504, 2009).

In order to address the question of how the current IDEA discipline policy affects practice at the local level, and to determine how the state and local educational agencies have complied with federal mandate, I investigated practices within the state, county and local district

described in Chapter 3. A detailed description of the policy and procedures followed by the state and local educational agencies under study, as well as expulsion, suspension and truancy data reported to the state, can be found in Appendix C.

**Summary; Local Level**

As seen in Appendix C, when considering the question of how the IDEA discipline policy and resultant regulations have affected and defined practice at the local level, we are looking at goals and tasks. When government creates public policy, goals are created for particular bureaus or agencies (Wilson, 1989). The Federal Government created the public policy in IDEA 2004; state and local educational agencies, (SEAs and LEAs), and special education local plan areas (SELPAs), are the agencies whose goal it is to define and disseminate the information necessary for front-line workers, or operators to understand and accomplish the tasks inherent within the public policy. An operator is the person that does the work (performs the task) that justifies the existence of the organization; in this case, teachers, administrators, and support personnel. How the operators perform their tasks determines whether or not the agencies' clients (the public) are satisfied (Wilson 1989).

In the district under study, the state and local educational agencies and the SELPA, have created documents, guidelines, and flowcharts, which have simplified fairly complex legislation and regulations, to enable the local operators to perform their tasks. However, in spite of the objective nature of these checklists and flowcharts, and the incredible amount of time and attention that has been devoted to this issue in legislative, judicial, and educational venues, disciplining students with disabilities remains complicated and, to some degree, subjective.

It is at the site level where the front line operators, teachers and administrators, come into contact with students, some of whom misbehave. The situations operators cope with on a daily basis, in a variety of jobs, define their tasks. Wilson refers to these circumstances as "situational imperatives" (Wilson, 1989, p. 38). School personnel face two main tasks, to focus student energies so they can learn, and to control student energies to maintain order; the preoccupation with maintaining order, in some instances, can dominate (Wilson, 1989). At every step of the process involving disciplining students, both with and without disabilities, situational imperatives can play a part. Behavior that some teachers find intolerable doesn't bother others; similarly some administrators are quick to suspend out of school, where others use in-school suspensions, or parent conferences. There can be disagreements as to whether or not a student's IEP is being fully implemented and whether or not a student's behavior is a manifestation of his or her disability, and there can be disagreements over the appropriateness of an interim alternative educational setting (IAES). The legislative design of IDEA, however, contains a built-in grievance mechanism that allows parties to file for a due-process hearing, and appeal a hearing officer's decision. Given the history of the controversy regarding discipline between parent advocates and school professional groups (Egnor, 2003), the built in opportunity for venue change (Itkonen, 2009), will continue regarding discipline. Because of the numerous situations where disagreements can arise, the discipline policy and regulations in IDEA 2004 compel school personnel at the local level to be more aware of their practices when disciplining students with disabilities.

**Data**

The data contained in Appendix C represents the expulsion, suspension and truancy figures from the last 7 years, reported to the state from the City District under study. As reported,

the district is also required to submit data to the state regarding the numbers of students with disabilities suspended and expelled, but this data is not publically available.

The enrollment numbers at each of the sites indicate that the populations have remained relatively stable for the past several years. Assuming that the numbers reported are accurate, it is evident that the district as a whole has a truancy problem; the data showing the district's truancy rate to be more than 20% higher than both the county and the state's rates for the same reporting periods.[28] Attendance data, in all likelihood, is kept fairly accurately, as it is a school's average daily attendance (ADA) that determines money received from the state. It would be a mistake, however to assume that all the numbers reported are accurate. Take, for example the number of total suspensions reported at the district level for the 2004-2005 school year – 14. The following year that number rose to 706, and the year following to 3,333, and then to a whopping 4,861. The extreme disparity in those figures is more likely due to reporting errors than to extreme, and negative behavior changes in the student's attending those schools. More than likely, it took the local operators (Wilson, 1989), a couple of years to establish procedures to be able to accurately record and report the information to the state. Whatever the reason for some of the disparities, data, especially if it is accurate, can be used to inform operators at the local level. One might, for example, examine what procedures within schools 4 and 5 enabled them to lower their truancy rate during the 2007-2008 school year, or what type of administrative practices resulted in school #3 lowering the number of students suspended between 2008 and 2010.

Data reported to the state is also being collected at the national level (see Appendix C). Included in the data collected at the national level, is information regarding the numbers of students with disabilities subject to suspensions and expulsions; and these data are categorized as

[28] http://www.cde.ca.gov/ds/sd/cb/dataquest.asp

to specific disability. When Senator Kennedy remarked, during a debate on IDEA discipline policy in the 107th Congress that there was "no data to support the contention that IDEA's requirements made imposing school discipline onerous" (Jones, 6/2001p. 6), there was no data. Hopefully, the data now being collected at the local level and reported to the states and to the Department of Education at the national level will help to inform future Congresses.

**Summary**

I have proposed in this chapter that discipline policy is a complicated issue. In addition to being defined over time in multiple venues and institutions, it is influenced by front-line workers who may be influenced by political pressures at the local level. Discipline is a recycled issue that in all likelihood will continue to be shaped by future reauthorizations and case law.

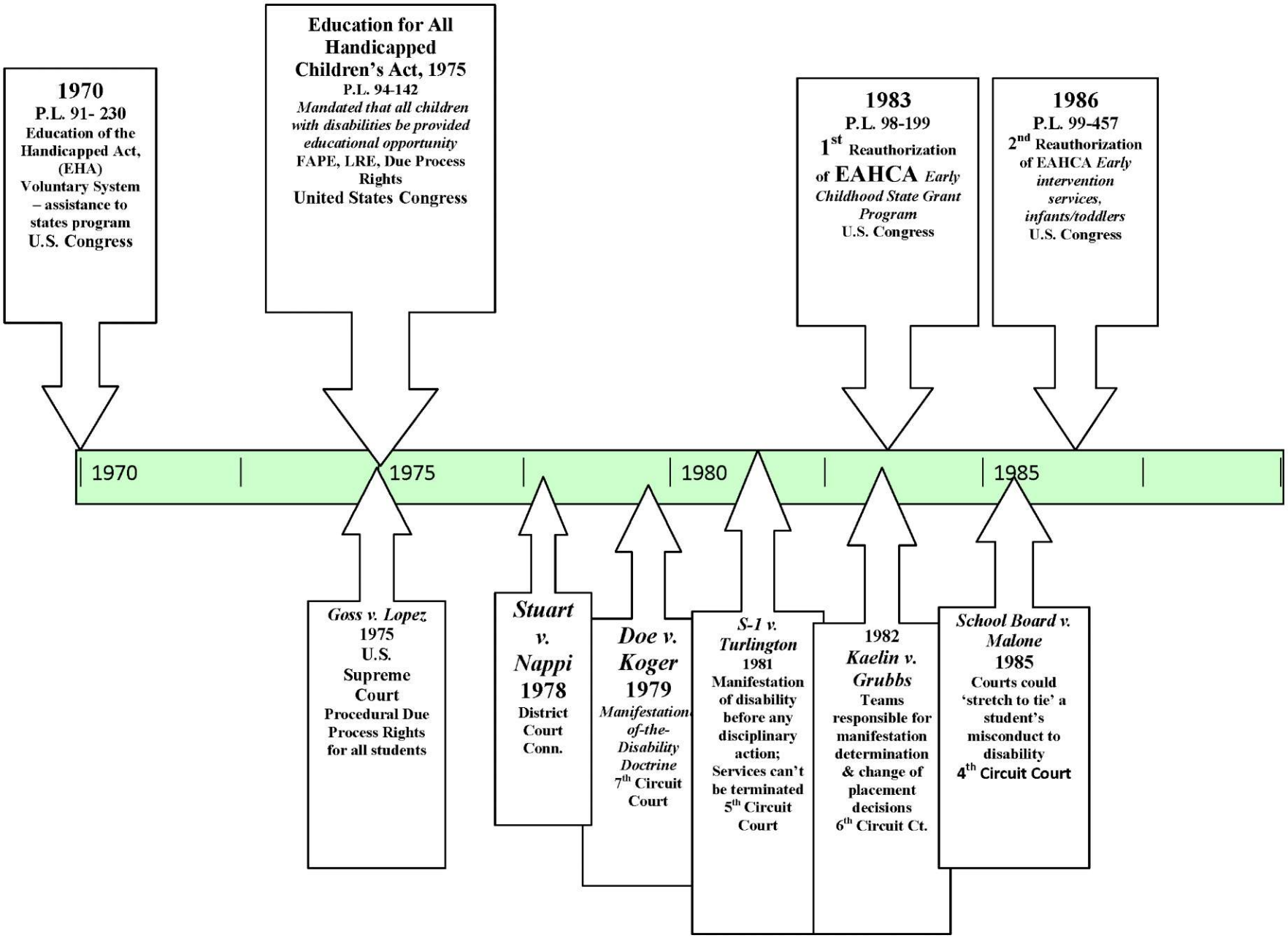


Figure 4.1 ***Evolution of IDEA Disciplinary Provisions***

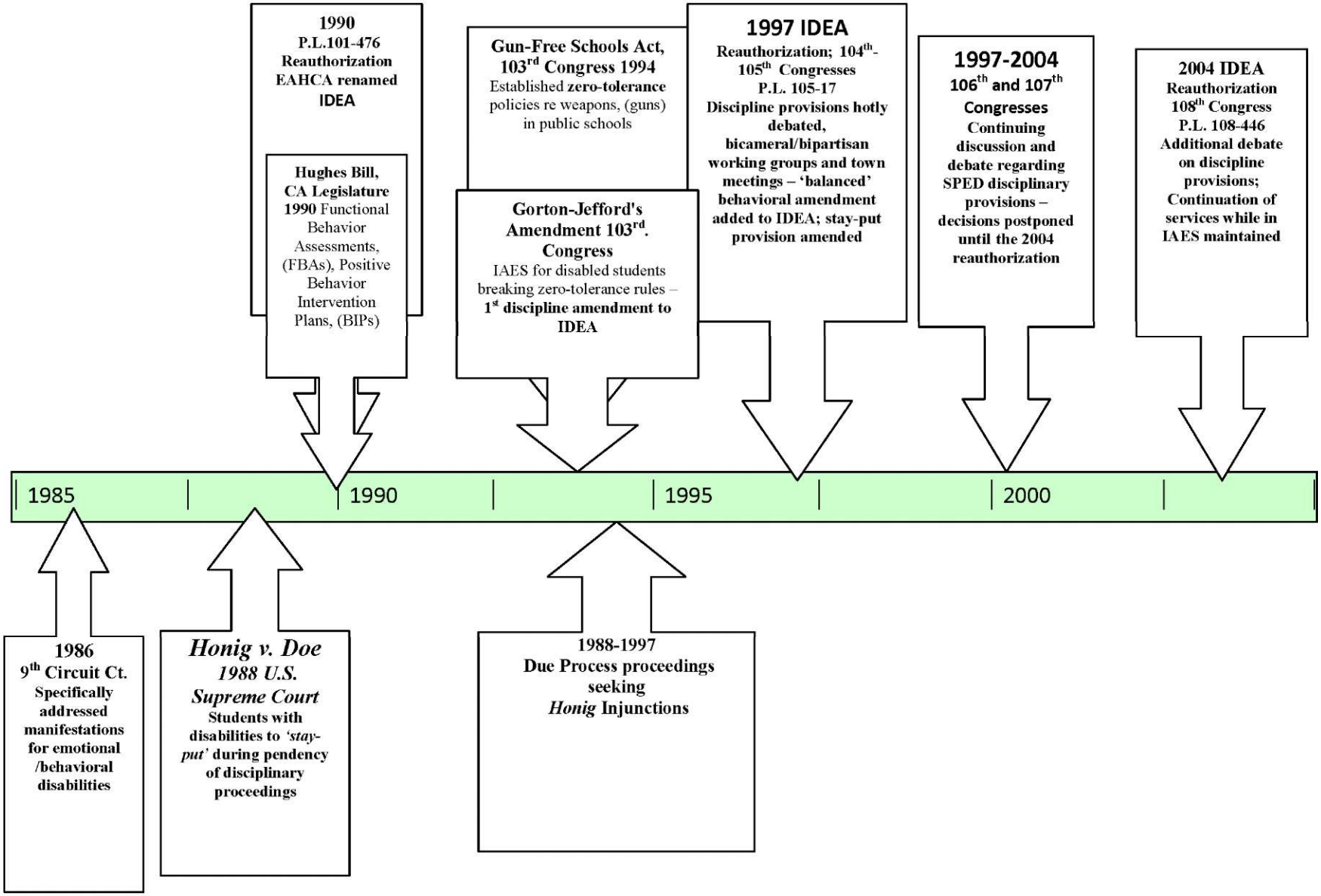


Figure 4.1 (cont.) ***Evolution of IDEA Disciplinary Provisions***

# Chapter 5

# Discussion

## Conclusions

This study described the forces, institutions, and process by which the current special education discipline policy, as contained in the 2004 Individuals with Disabilities Education Act, evolved over time, and looked at how that policy affected and defined practice at the local level. Several conclusions regarding the evolution of the current special education discipline policy can be made. The discipline of students with disabilities is a recycled issue. It has appeared on court, state, and Congressional agendas time and again in a variety of arenas, and it is an issue that is likely to appear on future agendas. The development of the discipline policy has been, and continues to be contentious, with advocates on both sides of the debate strongly believing in the rightness of their positions. The present policy is a compromise between disability advocates' desire to maintain and protect the hard-won access for students with disabilities, and teachers, administrators, and school officials' desire to maintain a school environment that is safe and conductive to learning. Additionally, it is an issue that has impacted practitioners at the local level.

**A recycled issue.** The origins of the discipline controversy began before the initial passage of The Education for All Handicapped Children's Act (PL 94-142) in 1975, when state statutes allowed for the exclusion of children with disabilities from attending public schools. In one of the important cases that led to the passage of PL94-142, *Mills v. Board of Education* (1972)[29], seven children with a variety of disabilities had all been excluded from attending public

[29] http://www.faculty.piercelaw.edu/redfield/library/case-mills.boe.htm

schools because they had been labeled as behavior problems. The 1975 legislation gave these and other children with disabilities the access to public education that they and their advocates desired, but the legislation did not include any provisions regarding discipline, or what should happen when a child with disabilities misbehaved in such a manner that they could be suspended or expelled. The legislation mandated a free and appropriate education in the least restrictive environment, but did not define what that meant if a student with disabilities misbehaved, and that is where, I believe, the problem began.

As James Wilson, explained in his book, *Bureaucracy: What Government Agencies Do and Why They Do It,* (1989), when government creates public policy, as they did with the passage of PL94-142, goals are created for particular bureaus or agencies. Wilson explains that if these goals are not clear enough for reasonable people to agree on what they mean, and if the authority and resources to achieve certain goals are not available, difficulties arise in making the goal operational (Wilson, 1989). PL 94-142 also mandated that public schools needed to develop an Individualized Education plan for every child with a disability that could be shaped and enforced by going to court. The government created rules with the passage of PL 94-142. When there is a disparity between legal rules, and bureaucratic realities, (the situations found within the public schools), the rules get subverted (Wilson 1989).

Some parents took advantage of their due process rights, when they thought the rules contained in the federal legislation were not being followed in regards to their children, they changed venue (Itkonen, 2009), and took their concerns to the courts. The courts addressed some of the concerns and clarified some of the rules, but the situation remained confusing. Congress reauthorized the Education for all Handicapped Children legislation, (PL 94-142), in 1983, 1986 and 1990, (see figure 4.1), renaming it the Individuals with Disabilities Education Act (IDEA), in

1990, without addressing the issue of disciplinary procedures for students with disabilities. The Gun-Free schools Act and the Gorton-Jeffers amendment in 1994 provided the first discipline amendment to IDEA. When IDEA came up for reauthorization in 1995, the discipline issue could no longer be ignored. The issue took two Congresses three years to finally come to a consensus. The 1997 reauthorized IDEA contained specific rules regarding the discipline of students with disabilities (see chapter 2), but that did not end the debate. The issue was revisited and debated during the 106th and 107th Congresses, and the discipline policy was further amended during the 108th Congress' reauthorization of the Act in 2004, the most recent reauthorization to date.

Each time the discipline issue was addressed, both in the courts and in Congress, specifics regarding procedures to use when disciplining students with disabilities were further delineated and defined, making the goal clearer, and perhaps more operational. There are still areas in the law however, that are subjective, such as what constitutes a change in placement, whether or not a student's behavior is a manifestation of that student's disability or what qualifies as an appropriate Interim Alternative Educational Setting, (IAES). Additionally the most recent authorization states that school personnel may consider any unique circumstance on a case-by-case basis when considering if a change in placement is appropriate for a student with disabilities. As long as the discipline provisions contain areas that remain subjective, and as long as parents, guardians and advocates of students with disabilities maintain their due process rights, it is likely that issues will be further litigated and the disciplinary amendments further modified. Disciplining students with disabilities is an issue that might well continue to be recycled, appearing on court and Congressional agendas in the future, further attempting to more

accurately define what a free and appropriate education in the least restrictive environment means.

**A contentious issue.** Throughout its evolution, the issue of disciplining of children with disabilities has been contentious. Congress, concerned that school districts were using discipline to exclude, segregate, and deny appropriate education to disabled children, passed the initial act, PL 94-142, in 1975, providing the stay-put provision and due-process rights for students with disabilities. Parents and advocates of children with disabilities, after having secured access to a public education for their children, wanted to maintain it. This access objective was the driving force behind the passage of the initial legislation, and safeguarding that access became a crucial element in defining the success of IDEA. This was a high-stakes, emotional and personal issue for these parents and advocates, they did not want to give away any hard-won rights because of the possibility it might affect the well-being of their child.

Discipline in the public schools, however, was a huge issue, and discipline often meant the suspending or expelling students, denying them access to school. Since 1969, public opinion polls regarding education had indicated that the matter of discipline was identified as one of the most pressing issues that schools needed to address (Cuban, 2003). When the Supreme Court upheld the stay-put provision in *Honig v. Doe* (1988), they concluded that IDEA did not 'hamstring', or constrain school officials whose job was to maintain safe school environments, but those school officials did feel hamstrung. During the *Honig* case, the National School Boards Association stated that they thought that it was inconceivable that Congress meant to 'tie the hands' of school officials who were attempting to protect the children under their care (Itkonen, 2009), when in fact the Court concluded that Congress very much meant to deny school administrators the authority they had previously exercised to exclude students with emotional

and behavioral disabilities from attending school (Etscheidt, 2002). Many school officials and administrators felt constrained in their abilities to remove dangerous and disruptive students from the classroom without going through long and sometimes costly due process procedures, and this made them angry. Additionally, school administrators characterized the IDEA discipline policy as unfair; a two-tiered system. They argued that even when a student with disabilities' inappropriate behavior was not a manifestation of his or her disability, and that student's IEP was fully implemented, the school still remained legally bound to provide continuing educational services. Many felt that a student who misbehaved, forfeited his or her right to a free and appropriate education. One policy-maker interviewed at the time of the reauthorization process in 1995 stated that he had rarely seen school principals get as angry as they did regarding the separate rules for disciplining students with disabilities – red in the face angry (Itkonen, 2009).

On the other side, advocates of children with disabilities questioned whether it was fair to suspend or expel a child when the student's inappropriate behavior was related to the school district's failure to provide the appropriate supports for their children to succeed. They characterized the situation as a leveling of the playing field, their children needed more supports, more considerations in order to make the system fair. They pointed out studies that showed that suspension and expulsion was a primary reason students with disabilities dropped out of school, and that drop-outs had much higher post-school arrest records. They worried about whether an unintended effect of making schools safer by expelling disabled students and stopping their services might result in increasing the crime rate by creating new clients for the juvenile justice system (Reauthorization of the IDEA, 1995).

**And then there was compromise**. The issue of disciplining students with disabilities has been contentious, with advocates on both sides of the debate holding very strong feelings and

opinions, and for good reason. Each side reflected democratic values; how to protect the common good, (the safety of all students), and at the same time protect the civil rights of a minority group, (students with disabilities). Eventually, in order to reauthorize IDEA in 1997, and again in 2004, each side had to give a little in order to get a little, and compromise was reached.

Special education policy in its entirety, as contained in the Individuals with Disabilities Education Act 2004, is a result of interactions among legislation, regulations, judicial interpretation, and local implementation (Itkonen, 2009); the discipline policy contained within IDEA 2004, is also a result of such interactions. In the United States, legislatures and the courts are the recognized sites of democratic dialogue and negotiation, where compromises are made among competing interests. These institutions must be attentive to the needs and interests of individuals or single constituencies, at the same time they are responsive to the common good, or the needs and preferences of the majority (McCarthy & Soodak, 2007). Special education discipline policy is a result of such compromise. The current policy attempts to be responsive to the needs and individual rights of students with disabilities who have the guaranteed right of a free and appropriate education in the least restrictive environment, and at the same time, responsive to the needs of those responsible for maintaining a safe environment in their schools so that teachers can teach and children can learn.

The struggle for students with disabilities to be included in general education classrooms was a politically based civil rights movement that resulted in the 1975 legislation that guaranteed these students a free and appropriate education in the least restrictive environment. Between 1975 and 1995 the discipline issue was addressed primarily in the courts where compromises were reached defining and delineating concepts such as disability-related conduct, manifestation

determinations, and rules and practices governing when and how students with disabilities could be punished for misbehavior. When the Gun-Free School's Act was passed by Congress in 1994, further compromises were reached with the passage of the Gorton-Jeffers amendment, allowing authorities to remove, for a limited time, students with disabilities who had brought a weapon to school. The 1997 reauthorization of IDEA contained extensive compromises regarding the discipline of students with disabilities; these students could be removed for a number of behaviors, although for a limited time, with parents and advocates maintaining their due-process rights, and students with disabilities retaining their right to continued services, although in a different location. The Interim Alternative Educational Settings (IAES), requirements were negotiated as a compromise allowing school administrators to remove a misbehaving student with disabilities (protecting the common good), and at the same time ensure that the student continue to receive the educational services guaranteed to them in the IDEA legislation. Additionally, the 1997, and 2004 reauthorizations include language mandating that the schools provide appropriate positive behavior support plans, an attempt to recognize why a student behaves in a certain way, and to provide environmental and curricular supports for students with disabilities so they can be successful within the general educational setting, without having to resort to disciplinary measures.

After the Supreme Court in *Honig v. Doe* (1988), stated in their ruling that Congress very much had intended to deny school administrator the right to indiscriminately remove students with emotional and behavioral disorders from attending school, compromises included in the Gun-Free School's Act and the 1997 and 2004 reauthorizations, have slowly given back some of that power to school administrators. The most recent reauthorization of IDEA in 2004 includes changes in policy that increase administrators' discretion relating to disciplinary consequences

for students with disabilities, however the policy's provisions still provide that students with disabilities and their non-disabled peers can receive different consequences for the same behaviors. The present policy, a series of compromises among competing interests, (parents and advocates, administrators, teachers), although far more specific and delineated than in 1975 when the initial legislation was passed, still contains complexities that can make implementation problematic at the local level.

**Impact at the local level.** The complexity of the discipline amendments in IDEA can make implementation at the local level difficult. The Individuals with Disabilities Education Act (IDEA), is both a civil rights statute and a grant statute (Reauthorization of the IDEA, July 11, 1995). As a grant statute, IDEA appends specific conditions to the receipt of federal funds, including complying with the discipline regulations contained in the statute. It is at the local level that compliance issues arise, some leading to due process procedures, some leading to adjudication in court. Due process procedures, especially those that end up in court can be expensive, costs that local districts would like to avoid. In order to receive federal funding and avoid the costs of litigation the implication is that local districts will comply with the regulations.

In Appendix C, I detailed how the rules and regulations, created at the national level in IDEA 2004, are written into the regulations in the state of California, and the local City District (CHSD), that I studied. I explained how the Special Education Local Plan Area, (SELPA), where this district is located has taken the regulations, and created documents, guidelines, and flowcharts that describe the process local schools should follow when disciplining students with disabilities who attend their schools. Additionally, I explained many of the implications for practice by describing the processes, timelines, and mandatory IEP team meetings that come into play when a student with disabilities misbehaves. All of this information is available to help the

teachers and administrators (the front-line workers), who are responsible for dealing with the situation when students with disabilities in their schools misbehave.

In spite of the available information and guidelines, because the policy is complex, and because some of the provisions in the statute are not clearly defined, implementing IDEA's discipline policy can present difficulties. School administrators need to develop school wide disciplinary plans; procedures and policies that both ensure the safety of all the students within their schools while protecting the rights of those individuals who have been identified as having disabilities. They need to be able to negotiate reasonable consequences for students with and without disabilities who misbehave. School disciplinary plans and consequences for misbehavior need to be well publicized so that students, their parents or guardians and school staff are all aware of the rules and what can happen if rules are broken.

Students will misbehave, however, and administrators will sometimes suspend, or recommend them for expulsion. This is consistent with Wilson's theories on operators and situational imperatives; what the front-line workers do, will be shaped by the situations they encounter at work, their own beliefs and experiences, external pressures on the job, and by peer expectations (Wilson, 1989). Some teachers can ignore behaviors that others can't, some administrators are quick to suspend out of school, while others are less punitive. However, when students with identified disabilities break the rules to the extent that the consequences have earned them repeated suspensions totaling ten days, or when one of them has committed an expellable offense, it is expected that school staff will follow federal and state regulations and hold a manifestation determination meeting.

The manifestation determination, the process of determining whether or not a behavior is related to a student's disability, is a procedure that can be subjective. As such, this part of the process can be arbitrary and inconsistently applied (McCarthy & Soodak, 2007). Since parents and guardians can object to the determination of the relationship, or nexus, between their child's disability and the behavior under question, and can invoke their due process rights, this is a procedure that personnel at the local level need to attend to carefully. The law requires that the IEP team, which always includes the parents or guardians of the child, determine whether or not a particular student's conduct was caused by, or had a direct and substantial relationship to his or her disability; basically deciding if a student can be held responsible for his or her behavior. The IEP team must also determine whether or not the conduct in question was a direct result of the Local Educational Agency's (LEA) failure to implement the student's IEP; essentially establishing if the school had done their part to provide appropriate supports and services the student needed to be successful in the general education environment.

The first question, whether or not a student's behavior is directly related to their disability, depends on the student's disability, but generally is determined by establishing whether or not the student in question understands the rules, and understands that their actions violated those rules. The second question – whether or not a student's IEP is fully implemented can also be difficult to determine. The team needs to establish if the IEP was appropriately written, whether or not the IEP included a behavior plan and whether or not the services described in the IEP were being delivered. If the student had a behavior plan in place, the team needs to determine if the behavior plan was adequate, whether or not it needs to be adjusted and whether or not all of the student's teachers had access to the IEP and knew about the provisions. All of this implies that special education personnel at the local level know how to write and

implement behavior plans and appropriate class room accommodations, and that all of the teachers and administrators that come into contact with the student are aware of the plan and are able to apply its provisions. Additionally, a behavior intervention plan or a positive behavior support plan can contain provisions for counseling services which must be made available to the student. This implies that local districts need to make counseling services available. Within the City District I studied, individual counseling is provided by a local, public mental health facility. The individual schools within the district also provide a variety of counseling groups, but these group options vary from site to site, and are dependent on available personnel. Group counseling has been made available for students dealing with anger management issues, drug and alcohol abuse, making positive choices, and grief counseling, among others. With an appropriately written IEP, behavior support plans in place, and access to professional counseling, a school can improve a student with disabilities' chance of maintaining a place in the general education environment, the least restricted environment mandated in IDEA.

The access to public education for students with disabilities, a cornerstone of IDEA, is greatly enhanced when students can be provided with the supports needed to enable them to be successful in the general education environment. The focus of the manifestation determination process should be on what supports can be provided to a student to enable them to remain in the least restricted environment with their general education peers. However, students misbehave, and sometimes that misbehavior is serious enough to warrant a change in placement. When a student with disabilities commits an offense or series of offenses that result in the need for long-term suspension, and an IEP team determines that the offenses are not a manifestation of that student's disability, a change of placement is in order. Additionally, a change in placement is required for a student with disabilities who commit one of the following acts; possessing or

furnishing a firearm, brandishing a knife, selling a controlled substance, committing, or attempting to commit sexual assault, or possessing an explosive, acts that require mandatory suspension for one year and recommendation for expulsion. Although a student with disabilities can incur a change in placement, the law stipulates that their educational services must continue so as to enable the student to continue to make progress in the general education curriculum and work towards mastering the goals in their IEPs, although in a different setting. These different settings known as interim alternative educational settings (IAES) are not clearly defined in the law. Local Educational Agencies (LEAs) and local districts are responsible for establishing and defining appropriate alternative educational settings for students with disabilities who are incurring long-term suspensions, or expulsions. Since interim alternative education settings are not clearly defined in the law, this is an area where parents and advocates can disagree. It is likely that some of these disagreements will result in court proceedings and legal decisions that will more clearly define what constitutes continuing educational services during long-term changes of placement (McCarthy & Soodak, 2007). Local schools therefore, should take care in ensuring that services enabling these students to continue in the general education curriculum are diligently provided.

Within the City School District under study, there are a range of alternative educational settings available to provide services to students with disabilities who are incurring long-term suspensions or expulsions from their home schools. As with many processes involving bureaucracies, changes take time. It can take time for all of the due-process proceedings to be accomplished and to get a student a student who is being removed from his or her home school enrolled in an appropriate alternative school. The district, however, is mandated to provide services to these students as soon as possible. Within the City School District under study, this is

accomplished by utilizing Home/Hospital teaching, or HHT. In order to qualify as an HHT teacher for a student with the disabilities, the teacher needs to hold a valid special education credential, and needs to be able to meet with the student, either at the student's home, or at another agreed upon location (e.g. a local library). The HHT teacher is required to provide tutoring in the same subjects the student would be taking if he or she was still attending their home school, and needs to report the progress the student is making to the home school so that credits earned by the student can be documented on his or her transcript. A student will remain in this HHT setting during the pendency of any due process proceedings, or until he or she can be enrolled in one of the community schools.

As described in chapter 3, the county where the City District is located operates community schools that serve students with and without disabilities. The community school that provides recovery programs related to substance abuse, anger management issues, emotional problems, and credit recovery, also functions as an IAES for students whose behavior has caused them to be removed from their home school.[30] In the district under study, the majority of the special education students being excluded from their home schools for offenses resulting in long-term suspension or expulsion are enrolled in the community school. Transition IEP meetings are held before a student enrolls at the community school, and before a student returns to his or her home school from the community school. Special education personnel from both sites attend the meetings in order to ensure that appropriate services at each site are compliant with a student's IEP, and will continue to be made available to the student.

In the event that a student with disabilities commits an offense that requires that the student be remanded to custody, the County operates a school within the Juvenile Justice Center

[30]http://www.vcoe.org

which provides continuing services enabling the student to continue to progress in the general education curriculum.[31] Credits earned at the Juvenile Justice Center are fully transferable to comprehensive, continuation, and community schools upon their release.

It is at the local level that the federal mandate for a free and appropriate education in the least restricted environment is made available for students with disabilities, and at the local level wherein it can be assessed whether or not appropriate services for those students are being made available. It is at individual school sites that administrators need to balance the democratic values of the common good, maintaining safe schools, with individual rights, the access to free and appropriate education for individuals with disabilities. In terms of implications for practice, this means that school administrators should develop and implement positive, comprehensive discipline plans for their schools, and they should make sure that all of the stakeholders; the students, their parents, teachers, and other staff are aware of the rules and consequences for breaking them. There needs to be an awareness at the local level that providing a free and appropriate education in the least restrictive environment for students with disabilities, necessitates a balance between the rights of individuals, and common good, and that 'fair' doesn't always mean 'the same'. Additionally, administrators need to have knowledgeable staff who know how to write and implement compliant IEPs and behavior plans, and they need to have the necessary resources available to provide intervention services when necessary.

[31] http://www.vcoe.org/Default.aspx?

**Future Research**

The issue of disciplining students with disabilities has been a controversial topic involving many people, organizations and institutions since before the initial inception of IDEA in 1975. It is an issue that has been addressed in United States district and circuit courts, and in the Supreme Court. It is an issue that has been repeatedly debated in the halls of Congress, an issue that took two Congresses three years to negotiate in 1997. Considering the number of years that the topic has appeared in a variety of venues, it must be assumed that a great deal of money in addition to people's time and attention has been expended in developing the discipline policy contained in IDEA 2004. When considering the resources and the time and attention of so many people and organizations, one has to ask whether or not the existing policy has been worth it. The question regarding whether or not the policy is working and has achieved what was intended provides, I believe, numerous implications for future research.

During the 107th Congress when Senator Sessions was sponsoring an amendment to IDEA's discipline policy, Senators Kennedy and Harkin argued against the amendment citing that there was "no data to support the contention that IDEA's requirements made imposing school discipline onerous" (Jones, 2001p. 6). However, since that time, data has been collected. As I described in Appendix C, local educational agencies are required to compile data regarding the numbers of students with disabilities suspended or expelled from their schools, and report this information to state educational agencies. This data is then reported to the national Office for Special Education Programs (OSEP) which is part of the U.S. Department of Education where they maintain a Data Accountability Center (DAC), which was established in 2007.[32] Included in

[32] https://www.ideadata.org/default.asp

the data DAC collects is information regarding the number of students with disabilities subject to unilateral removal by school personnel for weapon or drug offenses and data indicating the number of students with disabilities removed based on the determination of a hearing officer. The data represents the total number and percentage of students with disabilities subject to disciplinary removals from every state. Additionally, the totals and percentages of students subject to disciplinary removals are categorized as to specific disability.

In addition to informing Congress before the next reauthorization of IDEA, when the debate over the discipline amendments might still appear on the agenda, I believe that the collected data might provide a basis for research at the local state, and national levels. At the local level, researchers will be able to determine which schools under which administrators suspended or expelled students with disabilities, and the reasons why these students were expelled. Researchers might be able to use the information to discern, for instance, what type of administrative style, or school-wide discipline policy results in fewer suspensions or expulsions, and come up with improved school-wide behavioral plans.

Some of the arguments made during the initial Senate hearing in 1995 and subsequent debates on the IDEA disciplinary policy involved law enforcement, and whether or not eliminating the provisions in regards to students with disabilities would actually be more criminal behavior, by depriving children with disabilities who had committed behavioral infractions, of supervision and educational services (Jones, 6/2001). At the Senate hearing it was stated by a spokesman for Senator Harkins (D-IA) that, "One of the most common reasons disabled children drop out of school is because of suspension and expulsion. According to a 1992 study conducted by the US Department of Education, children with a mental illness

(emotional/behavior disorder), who drop out of school have a post-school arrest record of 73%, and the percentage for learning disabled is 62%. Will the unintended effect of expelling disabled children and ceasing services for them be increasing the crime rate and creating new clients for the juvenile justice system" (Reauthorization of the IDEA, July 11, 1995, p.5 )? Questions regarding whether or not the disciplinary provisions contained in IDEA have had an effect on keeping more children with disabilities in school and off the streets, or whether there has been any impact on the percentages of students with disabilities remanded to custody provide, I believe, additional appealing topics for research.

Further research might also be conducted within local sites to determine what sort of impact the policy is having in regards to school personnel, both teachers and administrators. Are they having problems coping with the regulations? Are they having difficulty with parents, or finding appropriate interim alternative educational settings? Do they have the resources to provide the appropriate supports to enable students to be successful and not get into trouble?

Much has been written about discipline and special education; nevertheless, it is a big enough topic to provide additional areas for more research. The fundamental debate regarding the issue of special education discipline is framed by parent advocates as one of civil rights, and by school officials as one of authority and protecting the common good, both strong democratic values. It is a problem that has recycled across time and venues; an issue that remains in the problem stream (Kingdon, 1995). As such, it is an issue that most likely will continue to appear on court and congressional agendas providing the potential for additional research.

It is my hope that this policy study, grounded in political science theory while examining a phenomenon in special education, might inspire other scholars to engage in interdisciplinary research on contentious topics in education that recycle on the policy agenda.

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# Appendix A

## Positive Behavioral Supports

Positive behavioral support is a general term that refers to the application of positive behavioral interventions to attain socially significant behavior change. A behavior intervention plan, also called a behavioral support plan or positive intervention plan is used to teach or reinforce positive behaviors (Sugai et al 1999). A Positive Behavioral Intervention Plan (PBIS) is developed by an IEP team once a Functional Behavioral Assessment is completed and the function of the challenging behavior has been determined. The plan should include a description of the challenging behavior, its function(s) and the preferred alternative behavior. The plan should specify the antecedents or predictors of the challenging behavior. The plan should include the teaching of skills to increase appropriate behavior. The plan should also contain changes that will be made in classrooms or other environments to reduce or eliminate problem behaviors, strategies to replace problem behaviors with appropriate behaviors that serve the same function for the child, and supports for the child to use appropriate behaviors. A positive behavioral intervention plan is not a plan to determine what happens to a student who violates a code of conduct; that would more appropriately be called a discipline plan (Positive Behavioral Intervention Plans, 2009).

# Appendix B

## United States Courts

The United States district courts are the trial courts of the federal court system, and have the jurisdiction to hear nearly all categories of federal cases. Since IDEA is a federal law, any disputes stemming under it are in the federal court system's jurisdiction. There are 94 federal judicial districts, including at least one in each state, the District of Columbia, and Puerto Rico (Administrative Office of the US Courts (AOUSC) /dist, 2010). The 94 judicial districts in the United States are organized into 12 regional circuits, each of which has a U.S. court of appeals. A court of appeals, or circuit court, hears appeals from the district courts located within its circuit (AOUSC/appeals, 2010). The circuit court's role is judicial review of the district court's ruling; circuit courts do not examine new evidence.

The United States Supreme Court consists of the Chief Justice and eight associate justices. The Supreme Court hears a limited amount of cases it is asked to decide each year, and since the Supreme Court sets its own docket, it is the choice of the Court as to whether or not they will hear a case. Cases heard by the Supreme Court may begin in the federal or state courts and usually involve significant questions about federal law or the Constitution (AOUSC/supreme, 2010).

# Appendix C

## State and Local-Level Policy and Procedure

In order to address the question of how the current IDEA discipline policy affects practice at the local level, and to determine how the state and local educational agencies have complied with federal mandate, I investigated practices within the state, county and local district described in Chapter 3. The information regarding practice at the state and local level is contained below.

## State

The California State Board of Education has a school safety, discipline and attendance policy, written in March, 2001. "It is the policy of the State Board of Education that all students enrolled in public schools in California have the right to safe schools. The State Board believes that students cannot benefit fully from an educational program unless they attend school regularly in an environment that is free from physical and psychological harm (CA State Board of Ed. 01-02, 2001, p.1)." The leadership in providing safe schools, establishing behavior standards and improving student attendance is the responsibility of the local education agency (LEA), district superintendents and site administrators. The State Board mandates that local districts create safe school plans, which need to be reviewed and updated annually, and further requires that each school report in July regarding the status of their safety plans on the annual school accountability report card (CA State Board of Ed. 01-02, 2001). The State Board believes

that effective plans need to be developed cooperatively with parents, students, teachers, administrators, community agencies and local law enforcement, and that collaborative working relationships with community agencies and law enforcement should remain ongoing. Although the implementation of a discipline policy is left to the LEAs, the state's policy includes guidelines to follow in providing a positive and safe learning environment, including establishing "appropriate rules, regulations, and discipline policies that are well publicized, consistently enforced, and nondiscriminatory, and take into account the due process that all students are entitled to receive" (CA State Board of Ed., 2001, p.2). The State Board also lists elements that should be included in local 'safe-school' plans which include the following:

- Descriptions of collaborative relationships between the school and community agencies
- A district-wide statement of philosophy, an enabling policy & guidelines that serve as a foundation for safe-school plans
- An assessment of the incidence of campus violence and vandalism, student discipline referrals resulting in suspensions or expulsions, & student attendance patterns, including numbers of unexcused absences & tardies.
- A discipline policy that clearly defines expected behavior and consequences for deviation from expected behavior including:
    - Rights & responsibilities of students
    - Student code of conduct
    - Descriptions of specific disruptive behaviors, e.g., anti-social behavior, gang-related attire & conduct, tagging offenses & attendance issues
    - Provisions for due process

- *Processes for reviewing the IEPs of students with exceptional needs, or students with disabilities on a Section 504 plan, before punitive action for misbehavior is initiated*

- Objectives and strategies to improve school safety, attendance & student behavior
- An evaluation of the effectiveness of the designated strategies, and
- A description of the roles and responsibilities of faculty and staff in the implementation of the plan (CA State Board of Ed., 2001).

The California Department of Education has established a Zero Tolerance policy in keeping with the Federal Gun-Free Schools Act of 1994, which, "requires school districts across the United States to pass what came to be labeled 'zero tolerance' policies for firearms in order to remain eligible for funds. The Act requires one calendar year of expulsion for any student bringing a firearm to school and referral of the student to law enforcement"[33] California law also adds the requirement for "mandatory suspension and recommendation for expulsion" of students who:

- Possess, sell, or otherwise furnish a firearm
- Brandish a knife at another person
- Sell a controlled substance
- Commit or attempt to commit a sexual assault or sexual battery
- Possess an explosive" [34]

Additionally, the California education code places limits on the ability to suspend a student or recommend a student for expulsion. A student may not be suspended or recommended

[33] http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp
[34] http://www.cde.ca.gov/ls/ss/se/zerotolerance.asp

for expulsion, unless a superintendent or principal of the school in which the student is enrolled determines that student has committed one of a defined list of violent or drug-related acts, (CA State Board of Ed., 2001).

In 1990 the California State legislature enacted Assembly Bill 2586, the Hughes Bill, requiring that special education students exhibiting serious behavior problems be provided with a functional analysis assessment (FAA), also known as a functional behavior assessment (FBA), by a trained behavior intervention case manager (BICM). The bill required that the BICM develop a positive behavior intervention plan based on the FAA which identifies the function of the negative behavior and includes plans for teaching positive replacement behaviors. The positive replacement behaviors should accomplish the same objective for the child, (e.g. wanting attention), but in a socially appropriate way, (Hughes bill, 1997). The bill further stipulated that behavior interventions used by schools could not involve the infliction of pain or trauma, including the use of restraints or seclusion (Hughes bill, 1997). Because of the Hughes Bill, Functional Behavior Assessments and Positive Behavior plans were law in California before they appeared in federal IDEA legislation.

**County**

The County Office of Education operates a number of special schools to provide services for students with disabilities; including schools specifically for students with an identified emotional disturbance (ED), a community school, and a court school. The community school provides recovery programs related to substance abuse, anger management issues, emotional problems and credit recovery. The community school is open to students with and without disabilities who are referred from their home schools, and often serves as an interim alternative

educational setting (IAES), for students with disabilities from other schools in the county.[35] The court school is housed in the County's Juvenile Justice Center, and serves students with and without disabilities who have been remanded to custody. At the court school, students can earn academic credit which is fully transferable to comprehensive, continuation and community schools upon their release.[36]

The County Special Education Local Plan Area (SELPA) is responsible for the implementation of the County Special Education Local Plan. It is the responsibility of the SELPA to insure a free and appropriate education to all students with identified disabilities according to the Individuals with Disabilities Education Act 2004, and California laws and regulations.[37] The SELPA is large, overseeing the implementation of services to students with disabilities in 21 local school districts. The Local Plan describes the commitment for the provision of services to students with disabilities within the County SELPA, in accordance with state and federal laws and regulations. The Local Plan contains eleven sections. Section 6 of the Local Plan provides guidelines and procedures for dealing with behavior and disciplinary issues for students with disabilities.[38] In addition to the local plan, the SELPA provides, through their website, a wealth of information on special education services, and information for families in both English and Spanish. The SELPA also makes available continuing workshops on a variety of topics like behavior management, functional behavioral assessment, Behavior Intervention Case Manager (BICM), training, and autism, among others. The SELPA also provides training on how to use the regularly updated and networked, Individualized Education Plan (IEP) computer program for special education teachers in the county. The IEP program contains all the

[35] http://www.vcoe.org/ccs/GatewayCommunitySchool.aspx
[36] http://www.vcoe.org/ccs/JuvenileCourtSchools.aspx
[37] http://www.venturacountyselpa.com/
[38] http://www.venturacountyselpa.com/Portals/45/Users/Local%20Plan/Section%206-Behavior.pdf

sections mandated by law, including positive behavior intervention forms, a page to record a student's behavior issues including number of days suspended, health and medical forms, (among others), and a direct link to the SELPA website, where a special education teacher can find answers to almost any question regarding services for the students on their caseload.

**District**

The City High School District (CHSD) is comprised of six comprehensive high schools, and one continuation school. (The district has recently opened 2 charter schools, but data from those sources is not included below.) The CHSD Board of Education has published a 43 page document relating to discipline policy in accordance with state and federal regulations and guidelines. Section11 of the document describes in detail the regulations pertaining to disciplinary procedures to be used when dealing with students with disabilities, especially in relation to suspension and expulsion proceedings: all in-line with policy contained in IDEA, 2004.

Each school in the district follows the district's Student Discipline policy. It is the responsibility of the individual schools to inform the students and their parents about the rules and regulations. Additionally, each school has adopted school rules about things like electronic devices (e.g. cell phones & MP3 players), tagging offenses, dress code, and random metal detector screenings. (Students with disabilities may have accommodations written into their IEPs which allow them to use MP3 players in certain instances, but that is the only exception to the rule.) School and district rules and regulations are published in a parent and student handbook. The district asks parents to pay special attention to the district attendance policy. Each site has specific procedures to deal with absent and tardy students. Parents are legally required to send

their children, between the ages of 6 and 18, to school, regularly and on time. Student attendance is a problem at all of the schools in the district. Students, who are habitually truant, are referred to the County's District Attorney's office School Attendance Review Board, (S.A.R.B.). Charges may be filed against a student, and penalties may include, among others, 40 hours of community service, a monetary fine and suspension or revocation of driving privileges. Penalties for parents and/or guardians may include fines up to $2500, probation, and jail sentences up to one year for severe infractions.[39]

All the schools in the City District are required to report the number of suspensions, expulsions and truancies that occur in their schools on the state-mandated accountability report card. The report card is published on the district website and on the website for the California Department of Education.[40] The City District's expulsion, suspension and truancy information includes the following data for all the schools in the district:

- Number of students enrolled
- Number of students with unexcused absences or tardies on 3 or more days
- Truancy rate
- Number of expulsions and suspensions involving violence or drugs
- Total Persistently Dangerous Expulsions
- Number of Non-Student Firearm Incidents
- Number of overall Expulsions and Suspensions

There is also data that shows the totals for all of the above categories, including county-wide and state totals.

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[39] http://www.ouhsd.k12.ca.us/about/schoolboard/policies/5000/b-p5144.pdf
[40] http://www.cde.ca.gov/ds/sd/cb/dataquest.asp

In addition to reporting the number of suspensions and expulsions, local educational agencies (LEAs), are required to report to the state educational agencies (SEAs), the reasons, or grounds for recommendation to expel, whether or not the expulsions recommended by the school principal were ordered or rescinded by the local school board, the types of educational referrals made during periods of expulsion, and the educational placements of students following their expulsion periods.[41]

Publicly available data published on the district and state websites does not include information regarding whether or not the suspended or expelled individuals were students with disabilities, however LEAs, are required to compile this information and report it to the state. The national Office for Special Education Programs (OSEP), part of the U.S. Department of Education (ED), maintains a Data Accountability Center (DAC) website (established in 2007), which provides access to data about students with disabilities served under IDEA.[42] Included in the data DAC collects is information regarding the number of students with disabilities subject to unilateral removal by school personnel for weapon or drug offenses and data indicating the number of students with disabilities removed based on the determination of a hearing officer. The data represents the total number and percentage of students with disabilities subject to disciplinary removals from every state. Additionally, the totals and percentages of students subject to disciplinary removals are categorized as to specific disability.

When a student with disabilities commits a behavior infraction severe enough to warrant suspension at one of the six comprehensive high schools in the City High School District, the

[41] http://www.cde.ca.gov/ds/sd/cb/dataquest.asp
[42] https://www.ideadata.org/default.asp

first personnel involved, in addition to those involved in the incident, are those keeping records. Generally the secretary of the administrator who attends to disciplinary matters keeps a record of the number of days a student with disabilities has been suspended; this information is also supplied to the student's special education case carrier. Depending on the infraction, these suspensions are usually for 1-5 days in length, with a 5-day maximum. There is no need for the district to provide services during the first 10 days of suspension, although a Behavioral Intervention Plan or a Positive Behavioral support plan should be written if one does not already exist. If a student with disabilities incurs further suspensions, and the total number of days reaches 10, an IEP team meeting must be held within 10 business days and the parents or guardians must be given a copy of the procedural safe guards.[43] The student's case carrier is responsible for arranging the meeting. In addition to the case carrier, participants required to be at the meeting include the student, the parent or guardian, the school psychologist, a school administrator, and a general education teacher, (usually one of the student's teachers). Other interested parties may also attend, e.g. a counselor, or an advocate. The team first needs to determine whether or not a 'pattern of suspensions' exists by determining if the behaviors resulting in the suspensions were substantially similar to each other, or if any of the suspensions were long enough or whether they were close enough together to cause a disruption to the student's education. The SELPA provides a worksheet which is used to determine if a pattern of suspensions exist; a pattern of suspensions is considered a change in placement.[44]

If it is determined that no pattern exists, the IEP team determines whether or not there is an appropriate Behavioral Intervention or Positive Behavioral plan in place; if yes, the plan is

[43] http://www.venturacountyselpa.com/

[44] http ://www.venturacountyselpa.com/

reviewed and the student may be further suspended up to 20 days. From the 11th day on, however, upon each incident, the special education case carrier needs to determine what services are necessary for the student to be able to continue to progress in the general curriculum and towards meeting his or her IEP goals, and to determine where those services will be provided. (Often, and especially for short-term suspensions, services are provided by collecting materials and assignments from the student's teachers and sending those assignments home with the student to be completed.) If there is no behavioral plan in place, and there is enough existing data, a behavioral intervention plan is developed, implemented immediately, and the student may be further suspended. If there is not enough data readily available, a Functional Behavioral Assessment must be conducted within 50 days, and a behavior plan developed, after which the student may be further suspended.

If it is determined that a pattern of behaviors does exist, a manifestation determination review must be conducted. The IEP team must determine if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability, or if the conduct in question was the direct result of the LEA's failure to implement the IEP, (as required by the disciplinary provisions in IDEA 2004). In order to make the determination of whether or not the behavior was substantially related to the child's disability the IEP team asks whether or not the student was able to understand or control the behavior and whether or not appropriate behavior intervention strategies had been provided. Additionally, the team determines if the current placement of the student is appropriate, and whether or not the services the student was receiving were compliant with the student's IEP. If it is determined that the behavior was directly related to the student's disability, or the student's IEP was not fully implemented, the behavior is considered to be a manifestation of the student's disability; the student may not be suspended

beyond 10 days, and the deficits in the student's IEP and educational program must be addressed and remedied. If it is determined that the student's placement was appropriate, the IEP was appropriately implemented, and that the behavior was not directly related to the student's disability, the student may be suspended up to 20 days, as long as an appropriate behavior plan is in place, and as long as the student continues to receive services that allow him or her to continue to progress in the general education curriculum.[45]

If a student with an IEP in any one of the district's high schools commits an expellable offense, all of which are delineated in the district's discipline policy, a Manifestation Determination meeting must be held within 10 school days of the incident. If the Manifestation Review team determines that the behavior under question is a manifestation of the student's disability, the student will not be recommended for expulsion, unless the offense is one of the five violations of the Ed Code that result in a mandatory recommendation for expulsion. The district may place a student with disabilities in an appropriate interim alternative educational setting, (IAES), for up to 45 school days, whether or not the behavior is a manifestation of the student's disability if the student; carries or possesses a weapon, brandishes a knife, sells or solicits a controlled substance, or inflicts serious bodily injury upon another person.[46] In a case where the review team has determined that the behavior under consideration is a manifestation of the student's disability and is not subject to mandatory expulsion, the team must review and possibly revise the student's placement, supports, services, and behavioral support plan in order to address the factors that led to the behavior infraction; the student can then return to the placement from which he or she was removed, unless the team agrees to a change of placement

[45] http://www.venturacountyselpa.com/

[46] http://www.ouhsd.k12.ca.us/about/schoolboard/policies/5000/b-p5144.pdf

as a modification to the behavior plan.[47] If there is no behavioral plan in place at the time of the infraction, the IEP team needs to initiate a Functional Behavioral Assessment (FBA), in order to develop a behavior plan. If the team already has sufficient data, they, (the manifestation review team), may conduct the FBA, and develop the behavior plan at the Manifestation Determination meeting.

If the Manifestation Review team determines that the behavior under question is not a manifestation of the student's disability, the student may be considered for expulsion by the school board. If it is decided by the School Board, to expel a student with an IEP for an act which is determined *not* to be a manifestation of that student's disability, the IEP team must decide how services specified in the IEP will be provided in order to allow the student to continue to advance in the general curriculum and make progress towards mastering the goals in his or her IEP.

In addition to those special education students who are placed in interim alternative education settings for weapons, drugs, or bodily injury offenses, the district's special education director can request a Due Process hearing for students who have not committed such offenses, if the district can produce evidence that maintaining the student's current placement is substantially likely to result in an injury to that student or to others. If this occurs, during the pendency of the Due Process proceedings, a Hearing Officer appointed by the district, (usually one of the attorneys from the group retained by the district), makes the decision as to whether the student returns to his or her original placement or to an IAES. The Due Process hearing must be held within 20 days of the district's request. The IAES is determined by the IEP team and will not

[47] http://www.venturacountyselpa.com/

exceed 45 school days, unless the time is extended by the Hearing Officer.[48] An IAES is selected so as to enable the student to receive the services necessary to continue to progress in the general curriculum and towards mastering the goals in his or her IEP, although in another setting. An IAES may be home/hospital instruction (HHT), where an individual with special education credentials, in consultation with the student's teachers, is paid to tutor the student at home or another location. The IAES may also be an alternative or non-public school. In the CHSD, the community school often functions as an IAES.

In cases where a parent or guardian does not agree with the IAES placement, the parent or guardian may appeal by requesting a Due Process hearing to determine the appropriateness of the placement. During the pendency of such proceedings the IAES chosen by the IEP team becomes the stay-put placement, until the Hearing Officer makes a decision or until the student has been in the IAES for 45 school days, whichever comes first.

In addition to supplying guidelines, flowcharts, and worksheets to assist personnel in the proper implementation of the procedures involved in determining patterns of behavior and manifestation determination meetings, the SELPA provides site administrators with a suspension checklist for special education students. The checklist contains a brief summary of the procedures involved when suspending a student with disabilities, along with the recommendation that site administrators use out-of-school suspensions for as few days as possible. This document also provides a list of alternate actions administrators might use instead of suspension when disciplining students with disabilities.

[48] http://www.venturacountyselpa.com/

**Data**

The following expulsion, suspension, and truancy data for the past 7 years was retrieved from the California Department of Education (CDE) website. Individual sites are required to report the numbers of students with disabilities subject to suspension and expulsion, but that data is not publically available. The third column in these data tables represents the numbers of students with unverified absences on 3 or more days, and is the standard under which truancy rates are calculated within the state.

**Table AC.1**

City High School District Expulsion, Suspension, and Truancy Data Information for **2004-2005**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,378** | **769** | **32.32%** | **8** | **2** | | | **5** | **2** |
| # 2 | **2,681** | **796** | **29.69%** | **20** | **1** | | | **21** | **1** |
| # 3 | **2,255** | **1,204** | **53.39%** | **1** | **4** | | | **1** | 4 |
| # 4 | **2,294** | **740** | **25.31%** | **16** | **3** | **1** | | **16** | **3** |
| # 5 | **3,169** | **2,706** | **85.39%** | **15** | | | | **15** | |
| # 6 | **2,096** | **873** | **41.61%** | **6** | **3** | | | 7 | **3** |
| H.S. C | **331** | **46** | **13.9%** | **2** | | | | **2** | |
| District | **16,032** | **7,206** | **44.95%** | **68** | **14** | **1** | | **70** | **14** |
| County | **143,708** | **31,486** | **21.91%** | **289** | **4,958** | **14** | | **301** | **10,524** |
| State | **6,303,896** | **1,422,276** | **22.56%** | **17,589** | **323,668** | **2,628** | | **20,992** | **738,845** |

**Table AC. 2**

City High School District Expulsion, Suspension, and Truancy Data Information for **2005-2006**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,358** | **967** | **41.01%** | **19** | **63** | | | **24** | **77** |
| # 2 | **2,606** | **742** | **29.45%** | **15** | **75** | | | **16** | **95** |
| # 3 | **2,249** | **1,772** | **78.79%** | **12** | **66** | | | **12** | **66** |
| # 4 | **2,983** | **996** | **33.39%** | **16** | **111** | | | **19** | **111** |
| # 5 | **3,287** | **2,293** | **69.76%** | **19** | **173** | | | **19** | **195** |
| # 6 | **2,207** | **1,263** | **57.23%** | **9** | **63** | | | **10** | **63** |
| H.S. C | **295** | **21** | **7.12%** | **3** | **75** | | | **3** | **75** |
| District | **16,138** | **8,299** | **51.43%** | **97** | **650** | | | **107** | **706** |
| County | **142,700** | **36,715** | **25.73%** | **273** | **5,609** | **22** | **1** | **297** | **11,656** |
| State | **6,232,430** | **1,533,730** | **24.61%** | **17,471** | **316,587** | **2,312** | **19** | **21,465** | **739,290** |

**Table AC.3**

City High School District Expulsion, Suspension, and Truancy Data Information for **2006-2007**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,406** | **961** | **39.94%** | **9** | **112** | | | **14** | **285** |
| # 2 | **2,562** | **2,053** | **80.13%** | **13** | **258** | | | **15** | **584** |
| # 3 | **2,261** | **897** | **39.67%** | **8** | **87** | | | **8** | **358** |
| # 4 | **3,028** | **1,451** | **47.92%** | **8** | **181** | | | **10** | **413** |
| # 5 | **3,235** | **2,169** | **67.05%** | **22** | **203** | | | **23** | **736** |
| # 6 | **2,278** | **1,666** | **73.13%** | **19** | **222** | | | **19** | **439** |
| H.S. C | **393** | **115** | **29.26%** | **8** | **158** | | | **8** | **442** |
| District | **16,321** | **9,638** | **59.05%** | **92** | **1,276** | | | **102** | **3,333** |
| County | **141,592** | **44,854** | **31.68%** | **337** | **6,698** | **20** | | **373** | **15,561** |
| State | **6,242,862** | **1,574,435** | **25.22%** | **19,480** | **347,528** | **2,587** | **43** | **28,339** | **815,744** |

**Table AC.4**

City High School District Expulsion, Suspension, and Truancy Data Information for **2007-2008**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,414** | **1,115** | **46.19%** | **31** | **130** | | | **39** | **365** |
| # 2 | **2,545** | **1,619** | **63.61%** | **29** | **297** | | | **34** | **841** |
| # 3 | **2,261** | **1,334** | **59%** | **6** | **118** | | | **7** | **329** |
| # 4 | **3,231** | **271** | **8.39%** | **22** | **267** | | | **30** | **817** |
| # 5 | **3,336** | **118** | **3.54%** | **18** | **275** | | **1** | **19** | **901** |
| # 6 | **2,265** | **984** | **43.44%** | **26** | **280** | | | **29** | **925** |
| H.S. C | **337** | **412** | **122.26%** | **12** | **136** | | | **12** | **679** |
| District | **16,480** | **5,863** | **35.58%** | **144** | **1,507** | | **1** | **170** | **4,861** |
| County | **139,985** | **39,922** | **28.52%** | **416** | **6,785** | **67** | **1** | **466** | **16,608** |
| State | **6,219,657** | **1,598,725** | **25.7%** | **17,356** | **338,164** | **2,377** | **50** | **21,373** | **824,231** |

**Table AC.5**

City High School District Expulsion, Suspension, and Truancy Data Information for **2008-2009**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,397** | **821** | **34.25%** | **36** | **127** | | | **42** | **244** |
| # 2 | **2,638** | **1,646** | **62.4%** | **35** | **325** | | | **5** | **346** |
| # 3 | **2,177** | **1,377** | **63.25%** | **12** | **49** | **2** | | **12** | **206** |
| # 4 | **3,209** | **1,895** | **59.05%** | **17** | **221** | | | **26** | **601** |
| # 5 | **3,229** | **1,736** | **53.76%** | **22** | **163** | | | **32** | **768** |
| # 6 | **2,302** | **1,184** | **51.43%** | **30** | **241** | | | **35** | **407** |
| H.S. C | **395** | **150** | **37.97%** | **5** | **133** | | | **5** | **346** |
| District | **16,851** | **8,843** | **52.48%** | **157** | **1,263** | **2** | | **192** | **3,268** |
| County | **140,708** | **41,266** | **29.33%** | **349** | **6,458** | **40** | **1** | **407** | **14,932** |
| State | **6,246,138** | **1,508,144** | **24.15%** | **16,891** | **332,483** | **2,525** | **3,779** | **20,883** | **782,692** |

**Table AC.6**

City High School District Expulsion, Suspension, and Truancy Data Information for **2009-2010**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,401** | **686** | **28.75%** | **26** | **76** | **3** | | **28** | **165** |
| # 2 | **2,761** | **514** | **18.62%** | **17** | **298** | **2** | | **17** | **563** |
| # 3 | **2,191** | **1,322** | **60.34%** | **6** | **41** | | | **7** | **195** |
| # 4 | **3,109** | **1,753** | **56.38%** | **15** | **126** | | | **20** | **354** |
| # 5 | **3,257** | **2,400** | **73.69%** | **18** | **252** | **2** | | **21** | **717** |
| # 6 | **2,205** | **1,067** | **48.39%** | **24** | **239** | **2** | | **29** | **398** |
| H.S. C | **398** | **310** | **77.89%** | **8** | **154** | **3** | | **8** | **319** |
| District | **16,819** | **8,052** | **47.87%** | **114** | **1,188** | **12** | | **130** | **2,716** |
| County | **140,607** | **56,036** | **39.85%** | **324** | **6,903** | **56** | **8** | **374** | **14,276** |
| State | **6,183,307** | **1,751,399** | **28.32%** | **17,525** | **331,425** | **2,878** | **4,557** | **21,147** | **767,962** |

**Table AC.7**

City High School District Expulsion, Suspension, and Truancy Data Information for **2010-2011**

| School | Enrollment | # with 3+ UA | Truancy Rate | Violence/Drugs Expulsions | Violence/Drugs Suspensions | Persistent/ Dangerous Expulsions | Non-Student Firearms | Total Expulsions | Total Suspensions |
|---|---|---|---|---|---|---|---|---|---|
| # 1 | **2,371** | **710** | **29.95%** | **15** | **78** | **2** | | **17** | **221** |
| # 2 | **2,692** | **735** | **27.3%** | **14** | **365** | **1** | | **16** | **629** |
| # 3 | **2,065** | **1,593** | **77.14%** | **6** | **221** | **2** | | **6** | **313** |
| # 4 | **2,998** | **2,372** | **79.12%** | **24** | **241** | **1** | | **29** | **444** |
| # 5 | **3,257** | **1,436** | **44.09%** | **11** | **181** | | | **11** | **337** |
| # 6 | **2,142** | **1,464** | **68.35%** | **17** | **241** | | | **22** | **374** |
| H.S. C | **410** | **268** | **65.37%** | **8** | **125** | | | **11** | **292** |
| District | **16,642** | **8,753** | **52.6%** | **95** | **1,465** | **6** | | **112** | **2,630** |
| County | **140,526** | **46,292** | **32.94%** | **291** | **6,288** | **60** | | **340** | **12,244** |
| State | **6,174,717** | **1,837,830** | **29.76%** | **15,930** | **319,596** | **2,594** | **143** | **18,649** | **700,884** |