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Federal Special Education Law and Discipline of Students with Disabilities: A Description of the Factors Influencing Key Actors Involved in the Development of Sections 612(a)(1)(A) and 615(k) of the Individuals with Disabilities Education Act

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Dissertation Approval Certificate

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Federal Special Education Law and Discipline of Students with Disabilities: A Description of the Factors Influencing Key Actors Involved in the Development of Sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at Virginia Commonwealth University

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List of Abbreviations

AFT	American Federation of Teachers
AR	Arkansas
ASA	Autism Society of America
CA	California
CEC	Council for Exceptional Children
CHADD	Children and Adults with Attention Deficit Disorder
D	Democrat
EAHCA	Education for All Handicapped Children Act
EHA	Education of Handicapped Children Act
ESEA	Elementary and Secondary Education Act
FAPE	Free and appropriate public education
GFSA	Gun Free Schools Act
H.R., HR	House of Representatives
IA	Iowa
IDEA	Individuals with Disabilities Education Act
IEP	Individualized education plan
IL	Illinois
IN	Indiana
LEA	Local education agency

MA	Massachusetts
MO	Missouri
NARC	National Association for Retarded Citizens
NASDSE	National Association of State Directors of Special Education
NASSP	National Association of Secondary School Principals
NEA	National Education Association
NH	New Hampshire
NSBA	National School Boards Association
NY	New York
NYSARC	New York State Association for Retarded Children
PA	Pennsylvania
PARC	Pennsylvania Association for Retarded Citizens
PL, P.L.	Public law
R	Republican
S., S	Senate
S.Ct.	Supreme Court
TX	Texas
US	United States
US DOE	United States Department of Education
USC	United States Code
VT	Vermont
WA	Washington

Abstract

FEDERAL SPECIAL EDUCATION LAW AND DISCIPLINE OF STUDENTS WITH DISABILITIES: A DESCRIPTION OF THE FACTORS INFLUENCING KEY ACTORS INVOLVED IN THE DEVELOPMENT OF SECTIONS 612(a)(1)(A) AND 615(k) OF THE 1997 INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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Until the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA), policies regarding discipline of students with disabilities were set primarily by case law. In 1995, the debates over reauthorization of the IDEA focused on proposed provisions designed to describe, at the federal level, the measures and procedures to be used by public school officials when disciplining students with disabilities.

The purpose of this study was to describe and analyze the factors influencing key actors involved in the development of the two sections of the 1997 IDEA that address discipline of students with disabilities. A review of the literature suggested that certain factors had influenced the development of other federal special education legislation. These factors were: case law; special interest group activity; views of federalism; and other related federal legislation passed at about the same time.

The design of this study was a case study. Interviews were conducted with key informants from government and special interest groups identified through a review of historical documents addressing the reauthorization of IDEA and through snowball sampling techniques. Interview data were corroborated with appropriate historical documents.

Analysis of the data revealed that the key actors' goal was to develop a federal discipline policy that balanced maintaining school environments conducive to learning and safeguarding the rights of students with disabilities. They used a policy development model to balance seven policy issues and seven influential factors as they developed the 1997 IDEA discipline provisions. The influential factors were: beliefs; other federal legislation; case law; conflicts between doctrinal, functional, and strategic views of federalism; lack of data; stories; and emotions. Of these, the factors that most influenced key actors were their beliefs and their functional view of federalism.

The study suggested further research on the applicability of the policy development model and its aspects to the development of other federal-level education legislation. Further research was also recommended on the influence of case law on future versions of special education legislation.

The study suggested that policy development at the state and local school levels focus on data collection, proactive approaches to managing discipline of students with disabilities, and means by which all students suspended long-term or expelled from school can continue to receive educational services.

CHAPTER 1: INTRODUCTION

Overview

Establishing student discipline policies, regulations, and procedures in public school has been challenging for public school systems and their boards. Through the years, policy changes have reflected shifting philosophies and societal expectations. Student discipline issues became more complex with the introduction of federal legislation mandating that public schools educate children with disabilities. While case law had served as the primary standard by which local school board policies regarding student discipline were developed, in 1997 discipline of students with disabilities was formally included in federal legislation. Specifically, sections 612 (a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act (IDEA) prescribe the degree to which public schools may discipline students with disabilities for their inappropriate behaviors and the processes to be followed when doing so.

Background

The United States Congress first required provision of a free appropriate public education to handicapped students, as they were then called, in 1966 when it enacted Title VI of the Elementary and Secondary Education Act (named the Education of Handicapped Children Act of 1966). In the new statute, Congress authorized states to receive federal money for providing educational services to specific populations of

handicapped children. Four years later, with the reauthorization of Title VI (1970) Congress renamed the law the Education of the Handicapped Act and expanded conditions under which states could access federal funds for programs for handicapped students. However, student discipline was not mentioned in the reauthorized statute.

Major changes occurred in 1975 when Congress separated special education legislation from the Elementary and Secondary Education Act and renamed the law the Education for All Handicapped Children Act of 1975 (EAHCA), also known as Public Law 94-142. In the EAHCA Congress included definitions of handicapped children, as they were still called, and expanded the types of related services available to those handicapped students. The EAHCA also required that (1) all identified children be provided free and appropriate public education (FAPE) in the company of regular education children to the greatest extent possible, and (2) that handicapped children be educated in accordance with individualized educational program plans (IEPs). The statute outlined specific procedures for determining goals, services, and evaluation methods to be provided for these children. While section 615 of the act described procedural safeguards for students and their parents to assure the protection of FAPE, no specific mention of student discipline was made.

Although each subsequent reauthorization resulted in the legislation becoming more complex, the focus of the statutes remained on providing educational and related services to children with disabilities. This held true through 1990 when the legislation was renamed the Individuals with Disabilities Education Act (IDEA). Once again, student discipline was not specifically included in the law.

Overall, in the reauthorizations of federal special education legislation from 1966 until 1995, Congress had remained silent on the issue of discipline of students with disabilities. Through 30 years of federal special education legislation the word "discipline" did not appear; and all procedures, regulations, and policies for disciplining students with disabilities had been established by case law and not by federal legislation. Historically, the federal courts had accepted the responsibility of ruling on due process issues, yet they reserved for schools the responsibility of determining the appropriateness of specific disciplinary measures.

In Goss v. Lopez (1975), for example, the United States Supreme Court established its view that public education is an entitlement for students protected by the Fourteenth Amendment of the Constitution of the United States, and that it can be taken away only by following due process procedures. At a minimum, the Court ruled, students being disciplined must be given notice of the charges against them, must have access to evidence against them, and must have a right to present their versions of events. For suspensions over ten days or for expulsions, students must be afforded more rights such as appeal procedures and additional hearings (Goss v. Lopez, 1975).

Beginning in the 1980's, several cases involving public school student discipline practices and students with disabilities reached the federal courts, whose rulings established that students with disabilities were due more process than were their nondisabled peers. In S-1 v. Turlington (1981) the US Fifth Circuit Court ruled that a student with a disability could not be expelled if the behavior resulting in the expulsion was caused by the student's disability. Doe v. Maher (1985) extended this protection to a

student with a disability being suspended long-term. As a result, school divisions and state educational agencies struggled to develop policies, regulations and procedures by which the degree of the relationship between a student's behavior and disability could be determined.

In 1988, the United States Supreme Court established, in Honig v. Doe, that suspensions of over ten days were to be considered a change in placement for students with disabilities; therefore the additional protections as described in section 615 of PL 94-142 applied to these children. If parents contested these long-term disciplinary measures, the student must remain in the then current educational placement, or "stay put," until this issue was resolved through the hearing process (Honig v. Doe, 1988). Once again, the responsibility of developing appropriate policies and regulations to implement the law fell to school divisions and state educational agencies.

The 1990's produced conflicting federal court rulings as judges struggled with an emerging legal issue of continuation of educational and related services to students with disabilities who are properly suspended long-term or expelled for behaviors not related to their disabilities. In one of the earliest cases on this point, Wayne v. Davila (1992), the Seventh Circuit ruled that states could not cease services to these students. Conversely, the Fourth Circuit ruled, five years later, that states could cease providing services to students with disabilities who were properly suspended long-term or expelled for behavior not related to their disabilities (Commonwealth of Virginia Department of Education v. Riley, 1997).

Thus for over more than a decade, from S-1 v. Turlington (1981) through Commonwealth of Virginia Department of Education v. Riley (1997), the federal courts had addressed special education disciplinary issues regarding notice of disciplinary actions, relatedness of disabilities to behaviors, defining and providing notice of changes in placements of students with disabilities, and the degree to which students with disabilities, properly disciplined, should have their educational services continued. School divisions and state agencies, in response to court decisions, have reacted swiftly to create increasingly complex policies reflecting the intent of these laws. Until the most recent reauthorization of IDEA, the United States Congress gave public school boards and officials little help in the development of those policies.

In the amended and reauthorized 1997 Individuals with Disabilities Education Act (IDEA) Congress widened its scope from addressing primarily educational topics to including other issues. The last reauthorization of IDEA was 18 months behind schedule because, in part, legislators could not agree on the degree to which discipline should be addressed in the legislation, if at all (Jennings and Rentner, 1996).

In the end, two sections of the newly reauthorized IDEA focused specifically on discipline of students with disabilities. These two sections were 612(a)(1)(A) and 615(k). Section 612(a)(1)(A) of the 1997 IDEA, under State Programs, clearly disallows ceasing of educational services to school-age students with disabilities who are suspended long-term or expelled from public schools. Section 615(k) of the 1997 IDEA clearly states the scope of authority schools have in disciplining students with disabilities and procedures by which they may do so.

Purpose of the Study

The purpose of this study was to describe the factors that influenced the key actors who developed sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act (IDEA), from the perspective of those key actors most closely involved in the development of these two sections of IDEA. Factors described included federal-level case law, other federal legislation recently passed that addressed populations with disabilities or public education, federalism philosophies of key actors, and special interest groups' activities.

Delimitations

Specifically, this study was concerned only with the development of sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act. While section 504 of the Rehabilitation Act may have been an influential factor in the development of IDEA, the development of section 504 of the Rehabilitation Act was not explored. While certain actions and policies of the US Department of Education may have been influential and needed investigation, the development of US Department of Education regulations accompanying the 1997 IDEA was not explored.

An historical overview of the United States Congress's development of special education legislation from 1966-1997 was undertaken to provide a rationale for exploring the influence of specific factors on those involved in the 1997 reauthorization of IDEA. However, this study was not an historical analysis of development of special education legislation. Nor was it intended to be an historical analysis of any identified influential factor.

Justification for the Study

Thirty years ago, only one-fifth of students with disabilities was receiving special education services in public schools in the United States. According to the most current data available, this number has steadily increased over time. As can be seen in Table 1.1, the numbers of students with disabilities served from 1988 until 1995 increased almost 20 percent. Approximately 85% of special education students served by public schools from 1993-1995 were between the ages of 6 and 17 inclusive, as indicated in Table 1.2.

Table 1.1

Students Ages 3-21 Served, School Years 1988-89 through 1994-95

School Year	Percent Change from Previous Year	Total Served
1988-89	1.7	4,533,793
1989-90	2.3	4,638,605
1990-91	2.5	4,756,517
1991-92	3.4	4,920,227
1992-93	3.3	5,081,023
1993-94	3.8	5,271,847
1994-95	3.2	5,439,626

Note. From US Department of Education, Office of Special Education Programs, Data Analysis System

During this same time period, over one-half of the students served were classified as having specific learning disabilities. Table 1.3 illustrates that the greatest increases in identification were in the categories of traumatic brain injury (33.2%), other health impaired (28.2%), and autism (19.5%).

Table 1.2

Number of Children Served by Age Group, School Years 1993-1994 through 1994-95

Age in Years	Number of Children		Change		Percentage of Total	
	1993-94	1994-95	Number	Percentage	1993-94	1994-95
3-5	491,685	524,458	32,773	6.7	9.3	9.6
6-11	2,458,924	2,520,863	61,939	2.5	46.6	46.3
12-17	2,079,094	2,154,963	75,869	3.6	39.4	39.6
18-21	242,144	239,342	-2,802	-1.2	4.6	4.4
3-21	5,271,847	5,439,626	167,779	3.2	100.0	100.0

Note. From US Department of Education, Office of Special Education Programs, Data Analysis System

Data showing increases in number of students with disabilities identified and served by public schools is relevant to the issue of discipline of special education students. The data suggest that the number of students identified for and served by special education programs is likely to continue to increase. Specifically, one could expect more students to be identified as other health impaired (most likely ADHD), autistic, or suffering from traumatic brain injury. It becomes a matter of great importance, then, to monitor any federal legislation that will have an effect on the increasing numbers of students with disabilities served by public schools.

Table 1.3

Number and Percentage Change of Categories of Students Ages 6-21 Served, School Years 1993-94 through 1994-95

Disability	Total		Change	
	1993-94	1994-95	Number	Percent
Specific learning disabilities	2,428,062	2,513,977	84,915	3.5
Speech or language impairments	1,018,208	1,023,665	5,457	0.5
Mental retardation	553,869	570,855	16,986	3.1
Serious emotional disturbance	415,071	428,168	13,097	3.2
Multiple disabilities	109,730	89,646	-20,084	-18.3
Hearing impairments	64,667	65,568	901	1.4
Orthopedic impairments	56,842	60,604	3,762	6.6
Other health impairments	83,080	106,509	23,429	28.2
Visual impairments	24,813	24,877	64	0.3
Autism	19,058	22,780	3,722	19.5
Deaf-blindness	1,367	1,331	-36	-2.6
Traumatic brain injury	5,395	7,188	1,793	33.2
TOTAL	4,780,162	4,915,168	135,006	2.8

Note. From US Department of Education, Office of Special Education Programs, Data Analysis System

According to the most current available data (reported in Table 1.4), Virginia's public schools provide special education services to 134,217 children ages 5-21. Students categorized as having a specific learning disability make up the largest

percentage of students receiving special educational and related services from Virginia public school systems (49.3%). Lawmakers and educators in Virginia must have an understanding of the disciplinary procedures and actions allowed under IDEA to ensure that they are not violating IDEA's requirement of providing a free and appropriate public education to Virginia's students with disabilities.

Table 1.4

Numbers of Children Ages 5-21 Served in Virginia Public Schools, 1997-98, by Disability Category

Disability	Number
Specific Learning Disability	66,683
Speech or Language Impairment	28,305
Mental Retardation	13,342
Serious Emotional Disturbance	12,189
Multiple Disabilities	1,784
Hearing Impairments	1,253
Orthopedic Impairments	838
Other Health Impairments	7,790
Visual Impairments	452
Autism	1,300
Deaf-blindness	4
Traumatic Brain Injury	277
Total	134,217

Note. From Commonwealth of Virginia Department of Education, Office of Special Education and Student Services (August, 1998)

Virginia lawmakers and educators have a vested interest in understanding the development of section 612 (a)(1)(A) of the 1997 IDEA. Here, Congress made clear that states are prohibited from denying a free and appropriate public education to any students with disabilities, including those properly suspended long-term or expelled. Virginia had had a history of ceasing educational and related services to these students, and that was the impetus for Commonwealth of Virginia Department of Education v. Riley (1997). Ultimately, the Fourth Circuit ruled in Virginia's favor in February of 1997. Congress overturned this short-lived decision with the passing and signing of IDEA in June of 1997.

Even prior to the reauthorization of IDEA in 1997, educators felt that they had little control when it came to disciplining students with disabilities. In testimony before the Senate Labor and Human Resources Committee, Dr. Michael Brown, president of the National Association of Secondary School Principals stated, "It is necessary to remove the barriers created by IDEA that deny principals the flexibility to maintain a safe and effective learning environment for all students" (Individuals with disabilities, 1997a). In an earlier address, Shankar (1996) echoed this view stating that disruptive students who cannot be removed from school settings destroy the educational opportunities for all students.

Principals in particular have been vocal about their perceptions of discipline of special education students, as noted in Table 1.5. According to a survey taken at the 1997 National Association of Secondary School Principals' annual conference, over 80% of school principals felt that special education disputes consume at least ten percent of

their time. A majority (52%) felt that special education disputes consume a disproportionate amount of time. Seventy-six percent cited at least one incidence where students with disabilities and students without disabilities were disciplined differently for the same offense. Sixty-seven percent strongly agreed that removal of chronically disruptive students with disabilities from their current placements would improve public schools' learning environments overall (S. Yurek, personal communication, March 18, 1997).

Table 1.5

Discipline Survey, School Climate Voice Poll, March 9, 1997

Question	Urban	Suburban	Rural	Total
1. In the past two years has at least one firearm been confiscated on your school property?	Yes 52% No 48%	35% 65%	33% 67%	39% 61%
2. Are students who commit a violent act in your school provided services in alternate schools in lieu of expulsion?	Yes 69% No 31%	65% 35%	51% 49%	62% 38%
3. Do disputes about the special education law, ranging from administrative details to court appearances, consume a disproportionate amount of your day	Yes 56% No 44%	52% 48%	48% 52%	52% 48%
4. Approximately what percentage of your time is devoted to special education disputes?				
Under 10%	19%	20%	15%	18%
10-20%	26%	40%	43%	37%
21-30%	30%	28%	32%	29%
31-40%	11%	7%	9%	9%
41-50%	9%	4%	1%	4%
Over 50%	6%	3%	0%	3%
5. In the past year, how many incidents occurred in your school where a special education student was disciplined differently than general education or a similar school code violation?				

(table continues)

Question	Urban	Suburban	Rural	Total
None	27%	22%	25%	24%
1-2	14%	20%	23%	19%
3-5	17%	20%	24%	20%
6-10	12%	11%	13%	12%
Over 10	25%	25%	13%	22%
N.A.	5%	1%	2%	3%
6. To preserve an effective learning environment, principals must be allowed to remove a chronically disruptive disabled student from their current placement				
1--Strongly Disagree	13%	8%	6%	9%
2	2%	0%	1%	1%
3	6%	3%	5%	4%
4	6%	3%	6%	5%
5	11%	11%	11%	11%
6 Strongly agree	59%	71%	68%	67%
No Opinion	4%	3%	4%	4%
7. Swift removal of disruptive students from the classroom would improve the confidence in public schools and result in improved learning for the majority of students who want to learn				
1--Strongly Disagree	10%	4%	7%	7%
2	2%	1%	2%	2%
3	2%	4%	4%	3%
4	1%	3%	2%	2%
5	14%	13%	13%	13%
6 Strongly agree	69%	72%	68%	70%
No Opinion	3%	3%	4%	3%

Note. . N = 485. From NASSP Voice Poll. Conducted at 1997 Convention in Orlando, Florida

The Tenth Amendment of the US Constitution gives states the authority over and responsibility for education of students by stating that powers not directly assigned to the federal government by the US Constitution are powers of the states. Since the first court cases arose regarding disciplinary issues, federal court rulings have supported this philosophy through a "hands off" approach to the specifics of disciplinary measures meted out by schools.

There was a need, then, to explore how Congress interpreted the Tenth Amendment with regard to prescribing specific disciplinary measures allowed and specific procedures that schools and school divisions must follow when disciplining students with disabilities. There is a need to explore why, in an age emphasizing the importance of equality, Congress allowed schools to discipline students with disabilities differently from their nondisabled peers for committing the same offenses.

Beyond the educational scope however, lay a more important reason for the study. The 104th Congress's attempt to reauthorize this piece of legislation failed as mentioned earlier, in part because of lack of agreement on the discipline amendments. In the 105th Congress, legislators were determined not to be in that position again. As a result a new process was developed for drafting and passing this piece of legislation (J. Downing, personal communication, April 10, 1997). Understanding the factors that influenced the key actors who developed sections 612(a)(1)(A) and 615(k) of the 1997 IDEA provided insight on the possibility of this "newer" process being used by Congress in the future.

Another trend prevalent in federal policy is the "New Federalism" affecting state and local governments (Gold, 1996, p.1). From the States' perspectives, reduced federal aid in the form of matching grants accompanies increased flexibility for States in administration of federal programs. This trend has been evidenced by changes in federal policy relating to welfare and Medicaid systems (Gold, 1996).

This trend has been called the "devolution revolution," a term coined by Richard Nathan. This term is now being used to refer to the passing of responsibility for certain programs down to lower levels of government (Gold, 1996).

The 1997 IDEA illustrated a "passing down" of the responsibility of educating students with disabilities to States and local school divisions. As a matter of federal policy, States are required to provide a free appropriate public education to disabled students, by way of this and earlier special education acts. Federal funding of special education has held fairly steady since 1966, which, with inflation and increased expense of offering special education programs, could be construed to be a net decrease in federal funding. However, unlike the revised welfare and Medicaid systems, there has been no increased flexibility for States in the administration of special education programs.

Indeed, the 1997 IDEA discipline amendments are very prescriptive in nature. These addition of these amendments called into question, then, the effect of the devolution evolution upon federal-level education policy. Data from this study provided insight into the degree of influence the devolution revolution may or may not have had upon the development of the 1997 IDEA discipline amendments.

Review of Literature

The review of literature served two purposes. First, historical documents from 1966-1997 were reviewed to help identify factors occurring around the times of major modifications to special education legislation. This study focused on the influence these factors may have had on the key actors involved in developing sections 612(a)(1)(A) and 615(k) of the 1997 IDEA. Second, formal research was reviewed to determine what studies had already been conducted that were germane to the purpose of this study.

Historical records that were reviewed fell into categories of case law, Congressional activity, legislation, and special interest group publications. Sources for

case law included *Federal Supplement, Federal Reporter, United States Report,* and *Supreme Court Reporter.* Information related to congressional activity was obtained from such sources as *Congressional Quarterly Almanac, Congressional Record,* minutes from Senate and House committee and subcommittee hearings, House and Senate Reports, and texts of Senate and House testimony, where available. Actual legislation reviewed consisted of the following:

Civil Rights Act, 1964;

Elementary and Secondary Education Act , 1966;

Education of the Handicapped Act, 1970;

Rehabilitation Act, 1973

Education of all Handicapped Children Act, 1975 and successive revisions;

Individuals with Disabilities Education Act, 1990;

Americans with Disabilities Act, 1990; and

Individuals with Disabilities Education Act, 1997.

Language used in historical document section of the literature review reflected the politically correct terminology of the time.

Information about the roles of special interest groups was obtained from newsletters and journals published by such groups as the Association for Retarded Citizens and the National Association of Secondary School Principals.

The information obtained through the review of documents was consolidated into tables. The tables provided a visual comparison of federal court rulings and opinions, political philosophy or attitude evidenced in testimony and hearings, federal legislation,

and special interest group activity with significant amendments to special education legislation over time.

The second part of the review of literature, the review of research, established the extent of study in the field of legislation development, and served two purposes. First, the review determined that studies had been conducted relating the influence of the factors identified in the review of historical documents to the development of federal special education legislation. Secondly, the review determined that none of the studies paired historical analysis with key actor interviews to determine factors influencing the thinking and processes behind the development of special education legislation. Sources reviewed included *American Journal of Political Science, American Politics Quarterly, Review of Politics*, books containing research related to the field of study, and dissertations appropriate to the field of study.

Design and Methodology

This study was qualitative in nature. It was a case study that explored in depth the factors influencing key actors involved in the development of sections 612(a)(1)(A) and 615(k) of the 1997 IDEA. Semi-structured interviews were conducted with key actors. Questions were designed to gather data about the degree to which the factors identified in the review of literature influenced their thinking in the development of the discipline amendments. Interviews were conducted in person. As recommended by qualitative research methodologies, interviews were tape recorded, and transcripts were made from the tapes (Bogden and Biklen, 1992).

Interview transcripts were analyzed inductively to identify topics and categories. A visual representation of the analysis was created from the interview data to show the relationship between topics and categories, and to show the relationship of patterns of data. Data gathered through interviews was compared against the historical record to help identify those factors influencing the development of the discipline amendments of IDEA.

An elite, purposive sampling technique was used. Identification of key actors came initially from bill sponsors and co-sponsors, committee and subcommittee chairs, representatives of special interest groups, and others mentioned in historical documents. Snowball sampling was also used to identify other key actors.

Definitions of Terms

The following terms and accompanying definitions used in this study are as follows:

IDEA: Individuals with Disabilities Education Act of 1997

Discipline amendments: Sections 612(a)(1)(A) and 615(k) of IDEA

Suspension: removal of a student from the school for a specified period of time

Expulsion: permanent removal of a student from the school

Change in placement: altering the settings in which a special education student receives his/her educational and related services; suspensions of over ten days

Stay put: having a child remain in a currently specified educational setting

Special education: "specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including -- (A) instruction conducted in the

classroom in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education" (IDEA, section 602(25))

Student with a disability: " a child -- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance ... orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services" (IDEA, section 602(3)(A)).

Federalism: " the mode of political organization that unites smaller polities among general constituent governments in a manner designed to protect the existence and authority of both national and subnational political systems, enabling all to share in the overall system's decision-making and executing processes" (Elazar, 1972, p. 2).

Doctrinal view of federalism: a view of federalism that presumes that each level of government specializes in certain functions, and that clear divisions of responsibility and authority exists among levels of government (Elmore, 1986)

Functional view of federalism: a view of federalism proposing that intergovernmental ties among levels are necessary, and that the divisions of responsibility and authority are less clear (Elmore, 1986)

Strategic view of federalism: a view of federalism holding that organized interrelationships among levels of government are prominent, and that few clear divisions of responsibility and authority exist (Elmore, 1986)

Special interest group: an organized group with common objectives that uses one-on-one meetings to influence public officials for some particular public policy (Murphy, 1973)

CHAPTER 2: REVIEW OF LITERATURE

Overview

It was necessary to investigate the development of federal special education legislation in the historical context in which it had been developed. Therefore, the first part of the literature review described chronologically events immediately preceding and occurring at the same time as major revisions to federal special education legislation from 1966 - 1997. Looking at the events and amendments from an historical perspective allowed the researcher to identify those factors that may have influenced key actors involved in the development of the 1997 IDEA discipline amendments.

Language used in this part of the literature review reflected politically correct terminology of the time. For example, "handicapped children" was used when describing events and legislation from the 1960's, while "child with a disability" was used when describing events and legislation from the 1990's.

The second part of the literature review focused on academic research conducted on each factor uncovered by the historical perspective review. Close attention was given to studies examining the development of federal special education legislation and to studies designed to show the effect of various factors on the legislative process.

Historical Perspective

The Constitution of the United States, among other things, assigns powers to various branches of the federal government. By way of the Tenth Amendment, it reserves to the states those powers "not delegated to the United States by the Constitution, nor prohibited by it to the States ..." (Commission on the Bicentennial ..., 1991). The responsibility and power of providing an education to citizens is neither delegated to the United States nor prohibited to the States by the US Constitution; therefore, it is a power reserved to the states.

Elmore (1986) described this philosophy as the doctrinal view of federalism, which is characterized by a " set of principles describing how levels of government ought to relate to one another" (Elmore, 1986, p.168). A clear division of labor enables the federal government to concentrate on matters of general and national concern while allowing states and localities to concentrate on those functions requiring adaptability to regional conditions.

What became clear throughout the review of historical documents, is that those involved in developing federal-level special education legislation often had differing perspectives of what these sets of principles were. Therefore, conflicting views of federalism played a role in shaping federal-level education policy in general, and federal-level special education policy in particular.

To better understand the theme of federalism evidenced in the historical documents, the following definition of federalism was taken from Elazar (1972):

> ... the mode of political organization that unites smaller polities among general constituent governments in a manner designed to protect the existence and authority of both national and subnational political systems, enabling all to share in the overall system's decision-making and executing processes (Elazar, 1972, p. 2).

Elmore (1986) attempted to explain how the political organization unites to protect the decision-making authority and executing processes of its systems. He did this by proposing doctrinal, functional, and strategic views of federalism.

The doctrinal view of federalism presumes that each level of government specializes in certain functions, and that clear divisions of responsibility and authority exists among levels of government. The functional view of federalism proposes that intergovernmental ties among levels are necessary, and that the divisions of responsibility and authority are less clear. The strategic view of federalism holds that organized interrelationships among levels of government are prominent, and that few clear divisions of responsibility and authority exist (Elmore, 1986).

Elmore (1986) and Elazar (1972) provided this researcher with the conceptual framework from which historical documents were analyzed. Throughout the historical perspective, events and legislation were viewed through various federalism lenses.

The 1950's

Through the mid 1950's a fairly well defined border existed between the states' power and control over education and that of the federal government. The three branches of the federal government, while realizing the states' compelling interest in maintaining

an educated citizenry was beneficial to the nation as a whole, chose not to interfere excessively in educational matters (Sharpes, 1987). This changed in the mid-1950's.

In a case heard before the Supreme Court of the United States it was argued that separate educational facilities for students of differing race did not offer equal educational opportunities to all. With the following words, Chief Justice Earl Warren and the US Supreme Court ushered in a new philosophy regarding the role of the federal government in education:

> In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms ... We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal (Brown v. Board of Education, 1954).

The decision in Brown (1954) represents a federal level involvement in education, which had been considered to be a state right.

With the decision in Brown (1954) came the beginnings of the intergovernmental networking needed to ensure that federal policy was implemented at the state and local levels. The Court legitimized such networking by recognizing the fact that education had a national as well as local impact; therefore, local, state, and federal levels of government could be called upon to work together to ensure an educated citizenry for the success of the nation.

Reactions to the Court's intrusion into education were mixed. At least one Congressman was "shocked at the constitutionally unauthorized assumption of legislative power" (Read, 1996 quoting US Representative Dale Alford (D-AR), Pioche Record, 1960).

Another view was expressed in a 1955 newsletter published by the National Association for Retarded Citizens. A letter to the editor read, "You will recognize, I am sure, that this statement of equal opportunity applies to the handicapped as it does to the minorities" (Zettel and Ballard, 1982, p.13). This letter suggested the potential for special interest groups to begin wielding influence on educational policy building.

In that same year, the desegregation issue arose once more in Brown II (1955). Dissatisfied with the states' slow progress in eliminating separate educational facilities for black students, the Supreme Court again admonished states to desegregate schools "with all deliberate speed" (Brown v. Board of Education, 1955).

In addition to creating policy regarding equality of educational services provided to all children, Brown (1954) appears to have had an impact in two other areas. The intrusion of the federal government into education raised questions about federalism; and the door was opened for special interest groups to begin to ensure that children with disabilities also received public education services. Table 2.1 shows a summary of these events.

Table 2.1

1950's Events Potentially Influencing Development of Federal Legislation Related to Education of Handicapped Children

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
Brown v. Board of Education of Topeka (347 US 483, 1954): Separate is not equal. Brown v. Board of Education (75 S.Ct. 753, 1955): Desegregation is to take place "with all deliberate speed."	Doctrinal View	National Association of Retarded Citizens	

The 1960's and 1970's

Eleven years passed before education of handicapped children was addressed through federal legislation. Events occurring during the 1960's that may have influenced early special education legislation are summarized in Table 2.2

President Lyndon B. Johnson's Civil Rights Act of 1964 and his declaration of the War on Poverty lay the groundwork for the rights of the handicapped (Neal and Kirp, 1986). Seeing the success of these two actions, President Johnson proposed that the federal government help fund, through state grants, educational centers and programs

serving mentally retarded and physically handicapped children ("President calls for ...", 1965).

Table 2.2

1960's Events Potentially Influencing Development of Federal Legislation Related to Education of Handicapped Children

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
Grunwald v. Commissioner Taxation (51 T.C. 108, 1968): Refusal of school division to provide free public education for blind student does not mean parents can seek as tax write-off private school tuition under medical expense, which is only allowable deduction; ordinary educational services do not qualify as medical care	Doctrinal View Shifting toward Functional View	National Association of Retarded Citizens Council for Exceptional Children	Civil Rights Act (1964) Elementary and Secondary Education Act (1965) Elementary and Secondary Education Act Amendments of 1966:Title VI Education of Handicapped Children (PL 89-750)

The National Association of Retarded Citizens (NARC) and the Council for Exceptional Children (CEC) were two of the few special interest groups representing the handicapped in the 1960's. According to Levine and Wexler (1981), the emergence of such groups began when those discriminated against became "fed up and politically band[ed] together for the purpose of adjusting the system to accommodate them" (p.14).

During 1965 and 1966, NARC and CEC aligned themselves with special interest groups supporting educational programs for the underprivileged and working toward the passage of the Elementary and Secondary Education Act. Few influential politicians or organizations were speaking in opposition to these two groups because their requests were not perceived to be excessive and because these same politicians and organizations did not want to appear to be against handicapped children (Levine and Wexler, 1981).

In committee hearings, representatives of NARC and the CEC spoke of the need for legislation that would provide free public education for handicapped children. They supported the need for proportional federal funding of state's educational systems and the need for an "administrative entity" at the federal level to advance pubic school education appropriate for each handicapped child (Levine and Wexler, 1981).

The result of presidential, congressional, and special interest group efforts was Title VI of the Elementary and Secondary Education Act Amendments of 1966. Title VI was called the Education of Handicapped Children Act, or EHA. It defined categories of handicapped children and established federal moneys in the form of state grants to assist states in initiation, expansion, and improvement of programs and projects for handicapped children at preschool, elementary, and secondary levels. The Act was specific as to the application for and administration of the grant moneys, but it described little in the way of what was actually expected from such programs (PL 89-750, 1966).

The entrance of the Elementary and Secondary Education Act (ESEA) in 1965, along with its accompanying amendments regarding handicapped children in 1966, has been described as foreshadowing a "new ... chapter ... in the ever evolving history of

American federalism" (Bailey and Mosher, 1968, p. 234). Rather than being illustrative of the doctrinal view of federalism, the EHA was an example of the move toward a functional view of federalism. Whereas doctrinal federalism focuses on the differences in function and power *between* levels of government, the functional view is characterized by the interrelationships of power and influence *among* levels of government. Those supporting a functional view of federalism recognized the need for governmental ties and interrelationships necessary for federal policies to be effectively implemented at state and local levels. Such functional interdependence among levels of government arose from the need to assure that federal policy was being carried out and to assure that the needs of state and local government were being taken into account by the federal government (Elmore, 1986).

ESEA as a whole and Title VI in particular described a set of relationships between the federal and state government and articulated the responsibilities of each in working together to provide a sound education for underprivileged and handicapped children. This meant that as more money was given to the states to carry out a national education agenda, more accountability on the part of the states was expected by the federal government to ensure the resulting policies were being implemented in the manner in which the federal government had envisioned.

The Act was reauthorized in 1970 with few substantive changes. Descriptions of services and centers for the handicapped were expanded, and a new section regarding the development of media for use by handicapped children was added. The amount of money available to states was also increased (PL 91-230, 1970).

During the late 1960's and early 1970's, the courts could not seem to agree on the degree to which federal government should seek to control the states' education of handicapped children. Several conflicting rulings were handed out at the federal level.

In Grunwald v. Commissioner of Taxation (1968) a school division had refused to provide a free public education for a blind child. The parents sought a tax write-off for private school tuition under a medical expense category, seemingly the only allowable place for the deduction at the time. In ruling against the parents, the court stated, "It is not for us to rewrite the statue in a new image by judicial edict. We must leave that to Congress" (Grunwald v. Commissioner of Taxation,, 1968).

In McMillan v. Board of Education of New York (1971) the court seemed unwilling to infringe upon the states' right to determine the degree of educational services it could afford to provide to its children. Despite the fact that handicapped students were not receiving the services they needed to succeed in schools, the court ruled that the state could limit offerings of and funding for special education programs as part of operating in a "fiscally responsible" manner.

A landmark ruling the same year illustrates a more functional view of federalism. The Pennsylvania Association of Retarded Citizens (PARC) filed suit on behalf of 13 mentally retarded children who were unilaterally excluded from participating in public education by state law. After the court found the law to be an unconstitutional violation of the Fourteenth Amendment, a consent agreement was entered into which stipulated the following:

> the existing Pennsylvania special education mandate would be expanded to include mentally retarded children;
>
> all mentally retarded children were to be provided with a free appropriate public education appropriate to their needs;
>
> whenever possible such education should occur with non-disabled peers; and
>
> no mentally retarded child could be excluded from public school without due process (Pennsylvania Association of Retarded Citizens v. Pennsylvania, 1971; Zettel and Ballard, 1982).

All of these conditions stipulated were later reflected in federal special education legislation, as will be seen.

Mills v. Board of Education of DC (1972) brought suit on behalf of seven mentally retarded children who were not being provided with a public education in the Washington, DC schools. The court ruled that "fiscal inefficiency" was no excuse for refusing to provide a free public education for mentally retarded children. While at first appearing to conflict with McMillan (1971), a close inspection of the opinion shows that it did not:

> The defendants are required by ... the District of Columbia Code and their own regulations to provide a publicly supported education for these 'exceptional' children. Their failure to fulfill this clear duty ... and their failure to afford them due process hearings and periodical review cannot be excused by the claim that there are insufficient funds ... The inadequacies of the District of Columbia Public School System ... certainly cannot be permitted to bear more heavily on

the 'exceptional' or handicapped child than on the normal child (Mills v. Board of Education of DC., 1972).

This decision also established case law procedures for providing written notice to parents prior to changing any aspect of a handicapped child's education, for procedural safeguards for such changes, and for due process should disagreements occur between parents and schools. Many aspects of the court's opinion were later reflected in federal legislation, as shall be shown.

While PARC prevailed in its attempt to ensure that mentally retarded children received a free public education, the New York State Association for Retarded Children was not so fortunate two years later. As foreshadowed by McMillan (1971), the court ruled that the state was not Constitutionally required to provide mentally retarded children with a specific level of educational services. Again citing fiscal responsibility, the court ruled that New York should "rationally distribute" fiscal resources, even if it meant limiting services to mentally retarded children (New York State Association for Retarded Children, Inc. v. Rockefeller, 1973).

A 1974 class action suit brought to the forefront the discrepancies in federal district court rulings. Families in Wisconsin were forced to send their handicapped children to private schools because the state did not provide a free public education for them. A class action suit was brought seeking tuition reimbursement from the state of Wisconsin for the families. Because Wisconsin was in the process of implementing a new state law providing a free public education for such children, the court continued the case; ultimately no ruling was needed. However, in issuing its opinion, the court

acknowledged the disparate rulings, citing Mills (1972) and PARC (1971) in favor of the plaintiff and citing McMillan (1971) and NYSARC (1973) against the plaintiff (Panitch v. Wisconsin, 1974).

In the midst of the court cases surrounding the education of handicapped children, the Vocational Rehabilitation Act, originally passed in 1943, was undergoing significant changes in Congress (LaVor, 1976). It appears that the interests of the handicapped community were continuing to be recognized at the federal legislative level. Section 504 was added to the Rehabilitation Act, and it stated:

> No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance (29 USC sec. 794, 1973).

During the 1970's the numbers of special interest groups increased, as did their activities. The establishment of the Senate Subcommittee on the Handicapped in 1972 brought state and local special interest groups to national prominence (Miller, 1983). Most active were NARC (boasting 1700 state and local chapters totaling 218,000 members) and CEC, with over 70,000 members nationally (Levine and Wexler, 1981).

Both organizations worked together to lobby for what they perceived to be needed changes in federal special education legislation. They cited the Fifth and Fourteenth Amendments of the US Constitution (due process clause and equal protection clause, respectively), Title VI of the Elementary and Secondary Education Act, and the

numerous federal court case rulings as rationale for devising and supporting the changes in federal legislation they wanted Congress to make (Levine and Wexler, 1981).

Major revisions to the federal legislation involving education of handicapped children occurred with the passage of the Education for All Handicapped Children Act of 1975. EAHCA, better known as PL 94-142, resolved and codified many issues raised in the courts during the late 1960's and early 1970's. The Act was removed from the Elementary and Secondary Education Act as stand-alone legislation; this in itself strengthened the impact of the Act on education for the handicapped. It set forth a clear purpose to ensure a free and appropriate public education, and to ensure that the rights of handicapped children were protected.

In addition to defining special education and related services, the Act accomplished the following:

required states and local school agencies (LEAs) to provide a free and appropriate public education (FAPE) for handicapped children;

required the development of individualized education plans (IEPs) for these students, and described the components of such plans and how they were to be developed;

outlined procedural safeguards for protecting FAPE;

required prior written notice whenever a LEA "proposes to initiate or change or refuses to initiate or change identification, evaluation, or placement ... of the child";

established rights to due process hearings and appeals of such hearings; and

required that handicapped children remain in their "then current educational placement" during hearings and appeals processes (PL 94-142, 1975).

The Act also provided a significant increase in federal funding for such programs for handicapped students. States would be eligible, through the Act, for up to 40% funding for education programs designed to meet the needs of handicapped students. To receive the funding, however, states would have to submit annual plans to the Commissioner of Education indicating how all of the Act's requirements were being met (PL 94-142).

Congress appeared to have paid attention to case law when developing EAHCA. As mentioned earlier, several aspects of courts' opinions are mirrored in the Act's language. Congressional subcommittees cited discrepancies in federal court rulings regarding financial resources that must be committed to funding programs for handicapped children. They used the apparent lack of state funding as a rationale for increasing federal funding to the 40% levels proposed ("Aid to education ...", 1975). The specificity of design of special education programs and services and the federal funding form them came as a direct result of Congress's acknowledgment of the "dramatically increased burden" placed on schools as a result of case law mandating FAPE for disabled students ("Congress overrides ...", 1975, p. 789).

Congress's focus on ensuring the protection of due process for handicapped children was drawn not only from case law but also from the Fourteenth Amendment of the US Constitution. This amendment states, "nor shall any State deprive any person of life, liberty, or property, without due process of law ..." (Commission on the

Bicentennial ..., 1991). Congress was indicating, through EAHCA, that handicapped students could not be deprived of a free appropriate public education without following the specific processes prescribed by the legislation.

Conflicting views of federalism appeared to arise over EAHCA. Congress seemed content to take a functional view, willing to provide federal money to states in exchange for states' documenting their following of the detailed instructions and procedures outlined in the Act. President Gerald Ford's administration, however, leaned toward a doctrinal view. Concern was expressed that the degree of prescription in EAHCA infringed upon states' rights of control over educational issues as provided in the US Constitution. Congress was chastised as irresponsibly promising a level of funding that could never be met ("Aid to education ...", 1975). Almost in protest, Ford signed EAHCA and vetoed the appropriations bill to which the funding was attached. Congress overrode the veto and the money was appropriated.

Table 2.3 shows the events occurring around the time of the development of EAHCA which may have influenced the extensive revisions made to special education federal legislation. Revisions to the Rehabilitation Act prevented the exclusion of handicapped persons, solely because of their handicap, in programs receiving federal money. The language and intent of case law was reflected in EAHCA, along with promises of increased funding. Views of federalism were clashing among federal branches of government. Finally, state-level special interest groups were becoming more visible as they represented handicapped children in class action suits.

Table 2.3

1970's Events Potentially Influencing Development of Federal Legislation Related to Education of Handicapped Children

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
Pennsylvania Association of Retarded Citizens v. Pennsylvania (334 F. Supp. 1257, E.D. PA, 1971): Deemed as unconstitutional state laws which allowed unilateral exclusion of mentally retarded children from free public education; Mills v. Board of Education of DC (348 F. Supp. 886, D. DC., 1972): Fiscal inefficiency is no excuse for not providing free public education to retarded children. McMillan v. Board of Education of New York (331 F. Supp. 302, S.D. NY, 1971): State can limit offering of and funding for special education programs as part of operating fiscally responsibly, even though it may mean disabled students will not get all needed services	Functional View: Congressional subcommittee cites federal funding as rationale Doctrinal View: Concern on part of Ford administration that federal legislation of special education infringes on state right of control over education	Pennsylvania Association of Retarded Citizens New York State Association for Retarded Children National Association of Retarded Citizens Council for Exceptional Children	Education of the Handicapped Act of 1970 (PL 91-230) Rehabilitation Act of 1973: Section 504 Education for All Handicapped Children Act of 1975 (PL 94-142)

(table continues)

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
New York State Association for Retarded Children, Inc. v. Rockefeller (357 F. Supp. 753, E.D. NY, 1973): State is not Constitutionally required to provide mentally retarded children with a certain level of education; NY rationally distributed limited resources to provide limited services. Panitch v. Wisconsin (390 F. Supp. 611, ED. Wisc., 1974): Class action suit for tuition reimbursement for families forced to send handicapped children to private schools because state didn't provide free public education for them; court continues case pending implementation of state law designed to guarantee provision of free public education; cites Harris, Mills, PARC in favor of plaintiff and cites McMillan, NYSARC, Aspira against plaintiff.			

1980 - 1993

From approximately 1976 to 1980, all three branches of the federal government were fairly quiet with respect to special education legislation. With the 1980's came new case law, continued debate over federalism philosophies, and increased involvement of special interest groups (see Table 2.4). Still, the 1983 amendments to EAHCA resulted in few substantive changes to the legislation (PL 98-199, 1983).

In 1982, a Supreme Court ruling addressed the educational services aspects of EAHCA. Parents of a handicapped child brought suit against a school board because they felt the services being provided to their child were not enough for the child to reach his/her potential. Upon appeal, the Supreme Court ruled that the purpose of EAHCA was to ensure access to educational services by handicapped students and not to maximize such students' potential (Board of Education v. Rowley, 1982).

In 1984, the Supreme Court issued a ruling regarding the ability of parents of special education children to recover damages in the form of attorney's fees. In Smith v. Robinson (1984) the Court determined that even if parents prevailed in a suit regarding a special education controversy, EAHCA's wording excluded attorney's fees from being recoverable.

Congress responded to this in 1986. With the reauthorization of EAHCA, Congress added an amendment allowing recovery of attorneys' fees whenever a handicapped student or parents of the student prevail "in any action or proceeding" (PL 99-372, 20 USC §1415(e)(4)).

The first court case involving discipline of handicapped students occurred in 1981. Several mentally retarded children were expelled from school for violations of the code of student conduct. Parents of one child took the case to court. In S-1 v. Turlington (1981) the court ruled that to expel handicapped students without determining whether or not the student's behavior was a manifestation of his/her disability was depriving the student of a free and appropriate public education describe in EAHCA without providing the student due process. The opinion read:

> [We] hold that a termination of educational services occasioned by an expulsion is a change in educational placement, thereby invoking the procedural protections of the EAHCA ... before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition ... (S-1 v. Turlington, 1981).

This opinion was supported by the ruling in Doe v. Maher in 1985. Here the Supreme Court ruled that a handicapped child could be neither suspended long term nor expelled without determining if the behavior was a manifestation of the disability. The Justices' opinion extended the opinion expressed in S-1 (1981) by stating:

> We agree that the EAHCA prohibits the expulsion of a handicapped student for misbehavior that is a manifestation of his handicap ... If the child's misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled ... the school district may cease providing all educational services just as it could in any other case. (Doe v. Maher, 1985).

Table 2.4

1980's Events Potentially Influencing Development of Federal Legislation Related to Education of Handicapped Children

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
S-1 v. Turlington (454 US 1030, 5th Cir., 1981): Disabled child cannot be expelled without determining if behavior was manifestation of disability. Board of Education v. Rowley (102 S.Ct. 3034, 1982): Purpose of EAHCA is to ensure access of disabled students to educational services. Smith v. Robinson (468 US 922; 104 S.Ct. 3457, 1984): Parents' attorneys' fees not recoverable under EAHCA. Doe v. Maher (1075 S.Ct. 1284, 1985): Disabled child cannot be suspended long-term or expelled if behavior was manifestation of disability; can cease educational services if behavior not related to disability.	Functional View: Representative Goodling (R-Pa.) and Representative Gregg (R- NH) move to deny federal funds to districts which don't have procedures for ensuring "functional literacy" as condition for high school graduation; Doctrinal View: Democrat's interpret above move as "unwarranted federal intrusion." Reagan supports National Commission on Excellence in Education while stating that the responsibility for improving education lies with parents and locales, not the federal government	National Council of Handicapped removed from US DOE and made independent National Commission on Education	Education of the Handicapped Act Amendments of 1983: PL 98-199 Education of the Handicapped Act Amendments of 1986: PL 99-372

(table continues)

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
Honig v. Doe (108 S.Ct. 592, 1988): Suspensions over 10 days are long-term; if dispute over disciplinary action occurs, child "stays put" until resolved.			
Dellmuth v. Muth (109 S.Ct. 2397, 1989): States not providing free public education to disabled students immune from suit.			

Length of suspensions, the placement of special education students during disputes over disciplinary actions, and continuation of educational services to special education students were the key parameters set by the Supreme Court in Honig v. Doe (1988). In this case, two emotionally disturbed students were suspended for five days for inappropriate behaviors. The suspensions were continued indefinitely pending expulsion proceedings. The students sued, citing violation of EAHCA's requirement that there could be no change in placement without prior written notice to the parent, and that during disputes over placement a special education child must remain in the then current educational placement, or "stay put." In Honig (1988), the Supreme Court ruled that suspensions of over ten days constitute a change in placement and procedural protections established in EAHCA apply, and that during disputes over disciplinary actions that

result in a change in placement, the disabled child must remain in the then current educational setting until the dispute is resolved. The opinion read:

> ... [schools and school divisions may] implementing regulations [that] allow the use of nonplacement changing procedures, including temporary suspensions for up to 10 days ... [EAHCA's] 'stay put' provision [prohibits the state or local education agency from unilaterally excluding disabled children from class for ... disruptive behavior ... (Honig v. Doe, 1988).

The Court also ruled in Honig (1988) that states could be held responsible for directly providing educational services to disabled students when local schools districts fail to do so.

Dellmuth v. Muth (1989) was a Supreme Court case that addressed directly neither discipline of disabled students nor specific types of services to be made available to disabled students. At issue was whether or not states could be sued for failing to provide a free and appropriate public education to disabled students. In Dellmuth (1989), the Supreme Court looked to the Eleventh Amendment of the US Constitution, which states, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State ..." (Commission on the Bicentennial, 1991).

Interpreting the EAHCA and the Eleventh Amendment of the US Constitution, the Supreme Court ruled in a 5-4 split that states not providing a free and appropriate education to disabled students were immune from suit. The section of the opinion addressing current federal special education legislation stated, "Congress failed to make

clear ... that it intended to hold states liable for not providing a free and appropriate public education ..." (Dellmuth v. Muth, 1989).

It appeared, then, that although previous court rulings required states to provide a free and appropriate education to students with disabilities, there was no recourse for students whose schools or school divisions failed to provide them with it. It also appeared that by stating, "Congress failed to make clear ...," the Supreme Court gave indication that Congress could amend EAHCA to exempt states from immunity in such instances (Dellmuth v. Muth, 1989).

During the 1980's federalism philosophies continued to clash. In a move indicative of Elmore's (1986) functional view of federalism, Representative William Goodling (R-PA) and Representative Judd Gregg (R- NH) proposed an education bill to be attached to the Rehabilitation Act. Gregg indicated that the federal government was well within its rights to hold states accountable for improving education when using federal money earmarked for that purpose. The bill would have denied federal funds to school districts which did not have procedures for ensuring functional literacy as a pre-condition for high school graduation ("House approves bill ...," 1983).

Reflecting Elmore's (1986) concept of a doctrinal view of federalism, Democrats interpreted the move as "unwarranted federal intrusion" into the states' right to develop educational systems ("House approves bill ...,", 1983, p. 1927). The proposed measure was defeated.

In the meantime, the newly formed National Commission on Education went about its task of studying American education and making recommendations. While

supportive of the Commission, President Ronald Reagan and his administration stated that the responsibility for improving education lay with parents and localities and not with the federal government ("House approves bill ...," 1983). This was another illustration of a doctrinal view of federalism (Elmore, 1986).

Federalism views continued to conflict with one another in the 1990's as Congress sought to deregulate money going into federal programs and to propose more prescriptive disability legislation at the same time. Courts again became quiet on the issue of discipline of students with disabilities, and new federal-level disability legislation was developed. Significant events of the 1990's potentially influencing special education legislation are shown in Table 2.5.

In January of 1990, Representative Smith (R-VT) spoke in support of deregulating federal money going to federal programs. He made it clear that EAHCA funding should be included in the deregulation. Despite support from the Bush administration and other Congressman, his proposals were defeated ("Bill seeks to untie ...," 1990).

Congress showed further support for citizens with disabilities by passing the Americans with Disabilities Act in 1990 ("Disability rights legislation ...," 1990). The Americans with Disabilities Act protected the employment rights of citizens with disabilities. Employers could no longer discriminate in their hiring practices based upon a person's disabilities, real or perceived. Employers were required to make "reasonable accommodations" that would allow persons with permanent or temporary disabilities to perform their job-related duties successfully (PL 101-336, 1990).

Table 2.5

1990's Events Potentially Influencing Development of Federal Legislation Related to Education of Children with Disabilities

Court Cases	Federalism Views	Special Interest Groups	Federal Legislation
Wayne v. Davila (969 F.2d. 485, 7th Cir., 1992): States cannot cease educational services to students expelled or suspended long-term. Virginia Department of Education v. Riley (106 F.3d. 559, 4th Cir., 1997): Congress did not state clearly and unambiguously that funding would cease if educational services to students with disabilities who were expelled or suspended long-term were ceased; therefore, services can be ceased to these students without funding being lost.	Doctrinal View: Representative Smith (R-VT) supports deregulation of federal money going to federal education programs, including EAHCA; has support from other congressmen and President George Bush Strategic View: Increased activity of special interest groups; change in process for drafting and passing 1997 amendments to IDEA.	"Zero-Tolerance" -- American Federation of Teachers; American Association of School Administrators; National Association of Secondary School Principals. "Zero-Reject" -- Consortium for Citizens with Disabilities; Council for Exceptional Children; Children and Adults with Attention Deficit Disorders; Autism Society of America; Justice for All. "Middle of the Road" -- National Association of State Directors of Special Education; National Education Association.	Individuals with Disabilities Education Act of 1990: PL 101-476. Americans with Disabilities Act of 1990 Gun Free Schools Act, 1994 Jeffords' Amendment to IDEA (1994) Individuals with Disabilities Education Act of 1997: PL 105-17.

The reauthorization of EAHCA also occurred in 1990. For the first time, some discussion during committee reauthorization hearings centered upon student discipline. Representative Major Owens (D-NY) was instrumental in the defeat of a proposed

amendment that would have allowed corporal punishment of students with disabilities. Unwilling to have the option eliminated, Representative Bartlett (R-TX) suggested a compromise amendment that would allow parents and teachers to jointly decide conditions under which corporal punishment could be used, if at all. This proposed amendment was also defeated in committee ("House panel OKs ...," 1990).

The 1990 version of EAHCA was renamed the Individuals with Disabilities Education Act, or IDEA. The changes to the Act were mainly technical in nature, although some definitions were made more clear. More specific information was added regarding data to be collected, components of State plans, and accountability processes (PL 101-476). Despite the numerous federal court rulings in the 1980's regarding student discipline, none of this the case law was incorporated into the federal special education legislation.

The ruling in Dellmuth v. Muth (1989), however, did not appear to have been ignored by Congress, however. Perhaps in response to the opinion's statement that Congress did not make clear its intent to hold states liable for not providing a free and appropriate education to students with disabilities, a new section was added to IDEA in 1990. Section 604 read:

> A State shall not be immune under the Eleventh Amendment to the Constitution ... from suit in Federal court for a violation of this Act ... In a suit against a State ... remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public entity other than a State ... (PL 101-476).

The continued conflicting of views of federalism, the discussion in committee meetings of discipline of students with disabilities, special interest group activity, and what appeared to be Congressional response to case law were subtleties in the early 1990's. The subtleties would not hold true for the mid-1990's, during the next reauthorization of IDEA.

1994-1997

Discipline of students with disabilities was complicated by the Gun Free Schools Act (GFSA) of 1994. In this Act, Congress required school divisions to develop policies providing for the immediate removal from schools of any students carrying weapons onto school grounds and for procedures allowing case-by-case review of such infractions, as needed (Gun Free Schools Act, 1994).

It became quickly apparent that case law governing special education discipline and GFSA appeared to be in conflict (Hehir, 1995). Senator James Jeffords (R-VT) was successful in getting the Jeffords' Amendment to IDEA passed almost immediately. The amendment allowed school personnel to immediately place students with disabilities who bring weapons to school into an alternative educational setting for up to forty-five days. If disputed, this placement would be the stay-put placement until hearings and court proceedings could take place (Education of Individuals with Disabilities, 1994).

During this same time period, Virginia was embroiled in a court case over ceasing educational services to students with disabilities. The Virginia Department of Education submitted its annual special education plan to the US Department of Education in 1995. This plan stated, as it always had, that educational services to students with disabilities

would cease if these students were expelled for behaviors unrelated to their disabilities. In fact, Virginia had gone on record citing 126 instances in which students with disabilities were expelled for reasons not related to their disabilities, and in which educational services were terminated (Commonwealth of Virginia Department of Education v. Riley, 1997).

This was in direct conflict with the Wayne v. Davila (1992) ruling. Here, the Seventh Circuit Court of Appeals ruled that educational services must be continued to students with disabilities who were suspended long term or who were expelled for reasons unrelated to their disabilities (Wayne v. Davila, 1992).

Virginia's case was heard in 1996 before a three-judge panel in the Fourth Circuit. The court ruled against Virginia, and authorized the US Department of Education to withhold federal special education funds from Virginia. Upon appeal, however, an eleven-judge panel ruled in Virginia's favor, nine to two. In February of 1997, the panel issued Justice Luttig's opinion for the majority and noted,

> In order for Congress to condition a state's receipt of federal funds, Congress must do so clearly and unambiguously ... Congress has not spoken through the IDEA with anywhere near the clarity and the degree of specificity required ... When a child's misbehavior does not result from his handicapping condition .. when a handicapped child is properly expelled, the school district may cease providing all education services ... (Commonwealth of Virginia Department of Education v. Riley, 1997).

The reauthorization of IDEA was beginning during the same time that this case was being tried in court. The first hearing on the reauthorization was held on May 9, 1995 before a joint subcommittee meeting of the Committee on Labor and Human Resources Subcommittee on Disability, US Senate and the Subcommittee on Early Childhood, Youth and Families of the Committee on Economic and Educational Opportunities, US House of Representatives.

For eighteen months hearings by both Senate and House subcommittees focused on the need to balance IDEA's provisions of FAPE and due process and the need to allow school divisions to discipline students with disabilities in a manner more consistent with the way nondisabled students are disciplined. Both House and Senate subcommittees agreed that any IDEA amendments addressing discipline of students with disabilities should provide schools and school divisions with clear provisions and procedures for disciplining students with disabilities who violate local codes of conduct (S. Rep. No. 275, 1996). These provisions should, under certain conditions, allow exceptions to or a redefining of the "stay-put" provision of IDEA (H.R. Rep. No. 614, 1996).

During the hearings, proponents of such amendments were vocal. Senators Jeffords (R-VT) and Paul Simon (D-IL) along with former Congressman John Brademas, the original sponsor of P. L. 94-142, were supportive of efforts to balance FAPE and "stay-put" provisions with harsher discipline for severe offenses (S. Rep. No. 275, 1996). Senator Slade Gorton (R-WA) promised support to measures that would better address safety of all students in schools by relaxing the "stay-put" provision and, therefore, make it easier to discipline students with disabilities ("Senators agree ...," 1995).

Representative James Greenwood (D-CA) spoke in support of provisions allowing teachers to directly address discipline of those students with disabilities who consistently exhibit patterns of disruptive behavior. He also expressed a desire that IDEA discipline revisions focus on extreme behaviors when considering stay-put exceptions. Representative George Miller (D-CA) suggested that a mandatory behavior manifestation hearing be held whenever expulsion was being recommended, and that the IEP teams' recommendations be considered as part of disciplinary hearings (H. R. Rep. No. 614, 1996). Senator John Ashcroft (R-MO) supported a toughening of discipline for seriously disruptive students. He proposed planning an amendment which would allow ceasing educational services to students suspended long-term or expelled when their behavior was not a manifestation of their disability ("Senators agree ...," 1995).

IDEA amendments focusing on discipline found support outside of Congress as well. Dr. Steve Kukic, former president of the National Association of State Directors of Special Education (NASDSE), supported a zero-tolerance policy workable, he believed, within the IDEA framework. The American Federation of Teachers (AFT) supported the ability of administrators to unilaterally remove dangerous students with disabilities, although they felt educational services should still be provided to them in an alternative setting (S. Rep. No. 275, 1996). The AFT went on record as supporting any changes to IDEA which would end the "double standard" of disciplining students with disabilities differently from their nondisabled peers ("AFT takes hard line ...," 1995, p. 3). While the National School Boards Association (NSBA) did not favor unilateral authority to expel or suspend students with disabilities, its members did support changes to the "stay-put"

provision what would allow for temporary removal of dangerous children. The National Education Association (NEA) furthered this idea by supporting alternative placements for students who possessed weapons, exhibited dangerous behaviors, or who chronically disrupted classrooms. Parents of disabled children speaking in favor of the amendments indicated that children must be taught that their disabilities are not excuses for their behavior (S. Rep. No. 275, 1996).

Less numerous but just as vocal were those Congressmen opposing IDEA discipline amendments. While they did not oppose disciplining of students with disabilities per se, opponents did express concerns about the intent and severity of disciplinary actions that could be allowed by such amendments. Opposition stemmed mainly from the Senate. Senator Tom Harkin (D-IA) vowed early on to fight revisions that he felt would return education of students with disabilities to where it was decades ago. Sharing his views were Senators Simon (D-IL) (who earlier had supported such measures) and Edward Kennedy (D-MA) ("Senators agree ...," 1995). Senators Gorton (R-WA), Gregg (R-NH), and Dan Coats (R-IN) expressed concern that too many specifications in the amendments would put Congress in the position of micro-managing school business. They explained their rationale in light of Congress's failure to provide the forty percent funding promised by original IDEA legislation (S. Rep. No. 275, 1996).

The National Parent Network on Disabilities, a two-year-old organization, saw the proposed discipline amendments of IDEA as a means by which students with disabilities could again be excluded from general education classes and public schools("Senators agree ...," 1995). Parents of children with disabilities who opposed the proposed changes

expressed concern that making it easier to remove students with disabilities from classes and public schools would relieve the schools of their obligation to provide them with an education and to teach them appropriate responsible behaviors (S. Rep. No. 275, 1996).

In the 104th Congress, two Bills resulted from the numerous hearings and committee meetings. House of Representatives Bill 3268 (1996), sponsored by Representative Randy Cunningham (R-CA), was the House version of IDEA which passed the House Economic and Educational Opportunities Committee in May, 1996. Senate Bill 1578 (1996), sponsored by Senator William Frist (R-IN), was the Senate version of IDEA which was passed unanimously by the Senate Labor and Human Resources Committee in March, 1996. Discipline amendments to IDEA in both Bills proposed time limits for suspension and expulsion of special education students, redefined the stay-put provision, establish parameters for ceasing educational services to special education students, and define terms related to discipline offenses (HR 3268; S1578, 1996).

House of Representatives Bill 3268 (1996) was approved unanimously by the full House on June 10, 1996. Senate Bill 1578 (1996), although passed by full committee, was never brought before the full Senate for a vote because there was still too much disagreement on discipline procedures school officials would need to follow (Jennings and Rentner, 1996). Measures to reauthorize IDEA died, requiring Congress to begin the process again during the 105th session of Congress.

Any agreements that were struck during the 104th Congress were lost by the time the 105th Congress convened its first session. Advocacy groups formerly in agreement

with discipline amendments withdrew their support, having been told by their supporters that they gave away too much. Also during the hiatus, Congressional changes occurred. The Senate Disabilities Subcommittee, headed by Senator Frist (R-IN) and responsible for drafting earlier IDEA amendments, had been dissolved; the Senate Labor and Human Resources Committee, chaired by Senator Jeffords (R-VT) was now leading reauthorization efforts. In the House, Representative William Goodling (R-PA) continued to chair the House Economic and Educational Opportunities Committee; but its Early Childhood Youth and Families Subcommittee, charged with earlier IDEA reauthorization efforts, was chaired by Representative Frank Riggs (R-CA), a newcomer to the IDEA reauthorization process ("IDEA", 1997).

The tone for the reauthorization efforts was set, not very positively, with Representative Goodling's opening remarks to Congress on January 7, 1997. He expressed his displeasure with a letter from the Consortium for Citizens with Disabilities reversing their agreement with prior efforts to reauthorize IDEA. His intentions for the latest efforts were made clear when he said,

> ... I must believe that certain segments of the disability community ... are not interested in releasing a working legislative document to the public at large for the consideration of all interested parties ... While I had previously stated that I intended to introduce a bill that included a sign of good faith for the disability community, I must take the [Consortium's] letter as a rejection of that sign. For that reason, I have chosen not to introduce such a bill. Instead I have introduced a

bill that saw unanimous passage just seven months ago in the House (IDEA Improvement Act, 1997).

Three weeks later, Senator Jeffords, in testimony before the Senate Labor and Human Resources Committee, introduced IDEA amendments in the form of Senate Bill 216, which was also identical to that introduced the previous year. He recognized that the amendments were in need of improvement, and called upon Congress and special interest groups to work together to resolve controversial issues (Reauthorization of the Individuals with Disabilities Education Act, 1997).

Congress was adamant is its resolve to pass IDEA during the first session of the 105th Congress. To that end, a unique process was put into place for the passing of the Bill.

Typically, a Congressman introduces a Bill to either the House or the Senate. The Bill is assigned a number and is then referred to one of the 19 standing House committees or one of the 16 standing Senate committees. It is the charge of these committees to oversee the drafting of the legislation and to process proposed amendments. The Bill, once voted on and passed by a committee, comes before the full House or Senate for approval. The House and the Senate can approve the Bill as is, approve the Bill with amendments, or can vote the Bill down (Johnson, 1997).

Because of the highly contentious nature of the IDEA discipline amendments, this process did not work for the reauthorization of IDEA. The process for drafting this legislation was changed. Senator Jeffords' staff, key House and Senate members, and representatives from the US Department of Education met regularly in closed sessions to

develop a bipartisan consensus Bill. As sections of the Bill were drafted, the bipartisan committee presented them at weekly "town meetings" open to the public. In so doing, representatives of various professional organizations, special interest groups, and the public at large could react to the proposed amendments and provide feedback. Only those sections of the amendments approved by the committee through this process were released as public information. The discipline amendments were among the last to be discussed at the town meetings (Senator Jeffords' office, J. Downing, personal communication, April 10, 1997).

There were several indications that support for a doctrinal view of federalism existed during the last reauthorization of IDEA. Senators Gorton (R-WA), Gregg (R-NH), and Coats (R-IN) expressed concern that too many specifications in the amendment would put Congress in the position of micro-managing school business. Their rationale was that Congress had never funded the legislation at the promised 40% level and therefore could not expect to tightly control the law's implementation (S. Rep. No. 275, 1996). Special interest groups also perceived problems with discipline of students with disabilities not as a federal issue, but instead as "problems with implementation of the law at the local level" (Justice for All, personal communication, March 19, 1997). Because tightly structuring student discipline could be considered unnecessarily intrusive to State's rights, the development of discipline policies, it was felt, should be at the State and not federal level (NASDSE, M. Mandlawitz, personal communication, April 11, 1997).

What was clearly in place during the development of the legislation was a strategic view of federalism. Elmore (1986) states, "When the number of federal categorical programs increases and the restrictions accompanying them multiply with only modest increases in federal support, the net value of federal support to states and localities declines" (p. 183).

According to Elmore (1986), increased restrictions and net decreases in funding at the federal level create conditions favorable for the emergence of the strategic view of federalism. The strategic view of federalism is characterized by special interest group activity. The federal government moves strategically to increase restrictions and procedures under which their funds can be used for specific programs. States and special interest groups move strategically to ensure that the restrictions will not unnecessarily burden them and to ensure that the limited funding will continue to come their way (Elmore, 1986).

As the proposed special education discipline amendments were destined to become more prescriptive in nature with no additional funds forthcoming, it became obvious to various special interest groups that they would need to compete with one another to ensure that their needs would be met through the federal legislative process. Advocacy groups quickly lined themselves along the "zero-tolerance" to "zero reject" continuum (Opuda, 1996).

Those supporting zero-tolerance philosophies felt that students with disabilities should be held to the same behavioral standards as their nondisabled peers. They felt that

less-safe learning environments resulted from not being able to discipline those students with disabilities who were truly dangerous. (Debenedictus, 1994).

Those standing at the zero-tolerance end of the continuum believed that there were instances when, regardless of the disability, a child should be removed from the public school setting and be treated as would any other child, including ceasing the child's educational services. Al Shankar (1996) of the American Federation of Teachers (AFT) stated at the organization's August conference, "... if you can't remove disruptive youngsters who destroy the education of everybody else, the schools are not going to work ...". The president of the National Association of Secondary School Principals (NASSP), H. Michael Brown, stated in the hearing of the Senate Labor and Human Resources Committee, "Students, whether they are disabled or not, must receive the same discipline as any other student who violates the rules" (Individuals with Disabilities. 1997a).

Those supporting the zero-reject philosophy believed that students with disabilities, because they would always have their disabilities, should not be further disabled by being excluded from having an education. Children and Adults with Attention Deficit Disorders (CHADD) "firmly believes that all children with disabilities deserve access to education" ("House holds two hearings ...", 1997). They did not support ceasing of services to students with disabilities under any circumstances. The Autism Society of America (ASA) did not support amendments allowing for interim alternative educational settings because, from their perspective, these alternatives were already available through the IEP process (S. Kowanacki, personal communication,

February 21, 1997). Gerald Hines, representing the Council for Exceptional Children, stated that "no child should be permanently expelled" and that "children with disabilities who are suspended should continue to receive a free appropriate public education" (Individuals with Disabilities, 1997b).

A variety of official positions relating to discipline of students with disabilities fell in between these two extremes. Federal lawmakers, House Republicans in particular, watched with interest the developments in Commonwealth of Virginia Department of Education v. Riley (1997), described earlier. The ruling in this case supported their view which was expressed by Representative Riggs (R-CA) who stated, "Republicans simply want to permit schools to treat children with disabilities like any other child in their school where the disability has no relation to the child's actions" ("House wrestling...", 1997, p.6).

While the National Association of State Directors of Special Education (NASDSE) would have preferred that the discipline issue be left to states to resolve, they realized this was not likely to happen. A compromise suitable to them required school divisions to determine, as part of the expulsion process, which educational services would be provided and the locations for such services (M. Mandlawitz, personal communication, April 11, 1997). In a softening of H. Michael Brown's January remarks, NASSP's official position in March of 1997 was,

> Educational services to a child should not cease ... IDEA should be modified to require the appropriate state or local agency to provide educational services to a

child whose dangerous actions cause that child to lose the opportunity to attend the local school (S. Yurek, personal communication, March 18, 1997).

Close to this position was that of the Council on Exceptional Children. They had gone on record supporting the position that educational services should never be terminated for students with disabilities, and that students with disabilities should not be expelled. They did support the removal of such students to interim alternative settings pending review of the students IEP if these students exhibited dangerous behaviors ("Advocacy in Action," 1997).

Resulting Legislation

IDEA was signed into law in June of 1997. Two sections were added that specifically address discipline of students with disabilities. These were sections 612(a)(1)(A) and 615(k). These sections are found in Appendices A and B, respectively.

Section 612(a)(1)(A) describes conditions under which states are eligible to receive federal funding for special education programs. In direct contradiction to the opinion handed down in Commonwealth of Virginia Department of Education v. Riley (1997), the legislation requires that states provide educational services to all students with disabilities, even those suspended long-term or expelled, in order to receive federal funds (PL 105-17). The comparison of the language in the court's opinion and the language in the legislation is shown in Table 2.6.

Section 615(k) outlines many specifics of discipline of students with disabilities. This section addresses under what conditions students with disabilities may be suspended or expelled, the numbers of days such students may be suspended or removed to

alternative educational settings other than what is prescribed in the IEP, and procedures that are to be followed if parents contest disciplinary action (PL 105-17). Much of the language seems to have been influenced by various judges' opinions in the court cases described earlier.

Table 2.6

Comparison of Language in Opinion Issued in Commonwealth of Virginia Department of Education v. Riley (1997) and IDEA section 612(a)(1)(A)

Language in Justice's Opinion	Language in IDEA, section 612(a)(1)(A)
"When a child's misbehavior does not result from his handicapping condition ... when a handicapped child is properly expelled, the school district may cease providing all education services ..." "Congress has not spoken through the IDEA with anywhere near the ... specificity required for us to conclude that the State's receipt of special education funds is conditioned upon their continued provision of education to handicapped students expelled for ... misconduct unrelated to their disabilities. The majority is unable to cite a single word from the statute or from the legislative history of IDEA evidencing that Congress even considered such a condition."	:" ... A State is eligible for assistance under this part for a fiscal year if the State demonstrates ... that it meets each of the following conditions: (1) ... A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school."

The 1997 IDEA now states that special education students may be suspended for up to ten days without it being considered a change in placement (PL 105-17). As shown in Table 2.7, this seems to be consistent with the ruling in the Honig v. Doe (1988).

Table 2.7

Comparison of Language in Opinion Issued in Honig v. Doe (1988) and IDEA section 615(k).

Language in Justice's Opinion	Language in IDEA, section 615(k)
" ... allow the use of ... nonplacement-changing procedures, including temporary suspensions for up to 10 school days ..."	"(1)(A) School personnel under this section may order a change in placement of a child with a disability -- (i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days ..."

The 1997 IDEA also states that before a student with a disability can be removed from school for more than ten days, appropriate personnel must determine if the misbehavior is related to the disability. As shown in Table 2.8, this is consistent with the ruling in S-1 v. Turlington, (1981). In addition, IDEA clearly specifies criteria by which personnel determine whether or not there is a relationship between the disability and the behavior (PL 105-17). Case law does not stipulate these criteria.

If school personnel determine that a student with a disability exhibits an inappropriate behavior that is not related to the student's disability, then the 1997 IDEA allows the student to be suspended or expelled, just as any other student would be. This is consistent with the ruling in Doe v. Maher, (1985).

Table 2.8

Comparison of Language in Opinion Issued in S-1 v. Turlington, (1981) and IDEA section 615(k)

Language in Justice's Opinion	Language in IDEA, section 615(k)
" ... before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition ..."	"(4)(A)... if a disciplinary action ... for more than 10 days is contemplated for a child with a disability who has engaged in behavior that violated any rule or code of conduct ... that applies to all children -- (ii) ... a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action. (4)(B) ... by the IEP Team and other qualified personnel ."

However, the 1997 IDEA nullifies the portion of the Doe v. Maher opinion allowing for ceasing of educational services to students with disabilities who are suspended or expelled for behaviors not related to their disabilities (PL 105-17). The language comparisons are shown in Table 2.9.

Table 2.9

Comparison of Language in Opinion Issued in Doe v. Maher, (1985) and IDEA section 615(k)

Language in Justice's Opinion	Language in IDEA, section 615(k)
" If the child's misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled ... the school district may cease providing all educational services just as it could in any other case."	"(5)(A) ... If the result of the review described in paragraph (4) is a determination ... that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner without disabilities, except as provided in section 612 (a) (l)."

The 1997 IDEA allows for exceptions to the above in three instances. Students with disabilities may be immediately placed in alternative educational settings for up to 45 days if they bring weapons to school, possess or sell drugs at school, or are found by a hearing officer to be dangerous to themselves or others (PL 105-17). As shown in Table 2.10, the language in IDEA extends the ten-day limit on removal from school imposed by Honig v. Doe (1988) to 45 days under these three conditions.

The origin of the 45-day limit is not specified in the literature. It can be noted, however, that the 1994 Jeffords' Amendment to IDEA allowed students with disabilities who brought guns to schools to be placed in alternative educational settings for up to 45 days (Education of Individuals with Disabilities, 1994). Table 2.10 compares the language of 20 USC § 1415, the Jeffords' Amendment, to that of the 1997 IDEA.

Table 2.10

Comparison of Language in Jeffords' Amendment (20 USC § 1415) and IDEA section 615(k)

Language in Jeffords' Amendment	Language in IDEA, section 615(k)
" ... if the proceedings conducted pursuant to this section involve a child with a disability who is determined to have brought a weapon to school under the jurisdiction of such agency, then the child may be placed in an interim alternative educational setting, in accordance with State law, for not more than 45 days."	"(1)(A) School personnel under this section may order a change in placement of a child with a disability -- (ii) to an appropriate interim alternative education setting ... for not more than 45 days if -- (I) the child carries a weapon to school or to a school function ... (II) the child knowingly possess or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function ... (2) ... A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if ... (A) maintaining the current placement of such child is substantially likely to result in injury to the child or to others ..."

(table continues)

Language in Jeffords' Amendment	Language in IDEA, section 615(k)
"... if a parent or guardian of a child described in clause (i) requests a due process hearing ... then the child shall remain in the alternative educational setting described in such clause during the pendency of any proceedings conducted pursuant to this section, unless the parents and the local educational agency agree otherwise."	"(7)(A) ... When a parent requests a hearing regarding the disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision ..."

The opinion in Honig v. Doe (1988) also stated that if there were controversies over the disciplinary actions, students with disabilities were to remain in the educational settings stipulated in the IEP until the issues were resolved. As shown in Table 2.11, the 1997 IDEA contradicts this ruling to a degree, stating that if controversies arise in the above three instances, students with disabilities remain in the alternative educational setting until the issues are resolved (PL 105-17). In so doing, IDEA upholds the language of the Jeffords' Amendment.

Through an historical perspective, it was noted that court cases, special interest group activities, shifting views of federalism and other federal legislation initiatives related to public education and individuals with disabilities were occurring near the times that significant changes were made to federal special education legislation. Historical documents did not conclusively verify, however, that any of these were considered directly by Congressmen or their staff as they drafted the 1997 IDEA discipline amendments.

Table 2.11

Comparison of Language in Opinion Issued in Honig v. Doe (1988) and IDEA section 615(k)

Language in Justice's Opinion	Language in IDEA, section 615(k)
" ... implementing regulations allow the use of ... nonplacement-changing procedures, including temporary suspensions for up to 10 school days ..."	"(1)(A) School personnel under this section may order a change in placement of a child with a disability -- (ii) to an appropriate interim alternative education setting ... for not more than 45 days if -- (I) the child carries a weapon to school or to a school function ... (II) the child knowingly possess or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function ... (2) ... A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if ... (A) maintaining the current placement of such child is substantially likely to result in injury to the child or to others ..."
" ... 'stay put' provision prohibits the state or local education agency from unilaterally excluding disabled children from class for dangerous or disruptive behavior ..."	"(7)(A) ... When a parent requests a hearing regarding the disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision ..."

The historical perspective was inconclusive with regard to what influenced the key actors involved in the development of the 1997 IDEA discipline amendments. The historical perspective did uncover four factors that required further investigation as potentially influencing key actors involved in the development of the 1997 IDEA discipline amendments. These factors were: case law, special interest group activities, views of federalism, and federal legislation relating to public education and individuals

with disabilities. The second part of this chapter, the Review of Research, investigated studies conducted on each of these factors.

Review of Research

Courts

Several theories regarding implementation and impact of court decisions were found throughout the literature. These theories suggested guidance in the design and analysis of research on court decisions.

The implementation of court decisions can be analyzed according to the Utility Theory, which basically involves a cost-benefit analysis. If the benefits of complying with the decision outweigh the costs or consequences of noncompliance, it is more probable that the court's decision will be implemented. The converse is also held to be true (Canon, 1991). There is, however, no empirical analysis useful in testing this theory in the judicial arena (Spriggs, 1996).

Legitimacy Theory proposes that the perceived degree of authority of a court to make a particular decision also affects the degree of implementation. If the court is perceived as respected and having the authority to make a particular decision, it is more likely that the decision will be implemented (Canon, 1991; Mondak, 1992).

According to the Communications Theory, the clarity of the decision affects the degree to which a court decision is properly implemented. Ambiguous decisions are less likely to be implemented. The voting configuration of a panel of judges also communicates the degree of support of a decision. Unanimous decisions send a more "clear" message and are more likely to be implemented than split decisions (Canon,

1991). Empirical studies do not exist testing this theory, but there have been several case studies, the conclusions of which seem to support the theory (Spriggs, 1996).

Organizational Theory rests on two premises: (1) organizations will protect their goals at all costs; and (2) organizations have an optimal operational inertia, which they attempt to maintain (Canon, 1991; Spriggs, 1996). Court decisions which are in conflict with the goals of the organization create "policy tension" and are less likely to be implemented than those decisions which are more congruent with organizational goals (Canon, 1991, p. 443). Also, court decisions which have less of an effect on organizational inertia are more likely to be implemented that those that will affect the inertia substantially (Canon, 1991).

The impact of court decisions should be studied through these theories over time to determine the "second order" consequences of a decision upon those who interpret, implement, and "consume" the decision (Canon, 1991, p. 439). All too often, there is little in the way of follow-up study to determine the impact and degree of implementation of a decision over time (Canon, 1991).

These theories lent credence to this researcher's belief that federal court decisions had an impact on those key actors involved in the development of 1997 IDEA discipline amendments. The theories helped lay the foundation for exploring that influence as part of this study.

Hoekstra (1995) used an experimental design to assess the impact of Supreme Court decisions on attitude change. The use of an experimental design allowed her to

control for some extraneous variables and to determine whether or not a causal relationship existed between sources of policy and attitudes towards the policy.

Subjects read two stories (randomly ordered), one about policy regarding funding for a controversial art exhibit and the other about policy regarding private property. They were randomly assigned to one of three sources about the policy: Congress, the Supreme Court, or a nonpartisan think tank. Stories were also written from conservative and liberal ideological perspectives. Students' opinions on the issues were measured prior to and after reading the stories, and appropriate statistical tests were used to analyze the results.

Hoekstra concluded that the Supreme Court could influence the opinions of those who hold it in "high esteem" (p.121); she further concluded that those holding the Court in high esteem could be persuaded by its rulings. These findings held most true on moral/social policy issues decided conservatively.

This study involved students, not members of Congress or special interest groups. Even so, the conclusions suggested that Supreme Court rulings could be influential in developing policy; and it was up to this researcher to establish whether or not federal legislation decision-makers held certain Court rulings in "high esteem" and considered them when developing 1997 IDEA discipline amendments.

American courts and Congress have both been studied by political scientists, but little research has been done on the interactions between the two (Miller, 1993). Congress has, in the past, added strength to Supreme Court decisions by enacting related legislation (as with the Federal Aid to Education Act of 1965 prohibiting funding of

segregated public schools), and it has effectively nullified Supreme Court opinions by the same means (Spriggs, 1996). Levine and Becker (1973) reported that Congress is in a better position than the courts to promote significant social change. While empirical studies have looked at the numbers of times these two institutions have supported or not supported one another in their actions, little research attempted to explain the rationale or interrelationships of their actions.

Studies suggested that the United States Congress acts as a policy maker in designing and passing legislation. The Supreme Court, other studies showed, is held in high esteem in the policy arena (Mondak, 1992). These two findings were melded in research conducted by Adamany and Grossman (1989).

Adamany and Grossman (1989) suggested that Supreme Court decisions in particular will have an impact on national policy when three conditions exist in the legislative branch of the national government. First, Court decisions must appeal to the ideology of at least a sub-group of a major political party. Second, that sub-group must be "represented in a substantial number of strategic positions" of the national government (p.214). Third, it must be possible to forward or block the implementation of the Court's decisions from these positions.

Their theories resulted from a review and compilation of several studies. Using data from a 1976 Wisconsin survey (N=581), they concluded that those they define as political activists showed either stronger support of or stronger disfavor for some Supreme Court decisions than did those defined as politically inactive. When cross tabulating ideology and Court decision support, they found that liberalism and activism

are the variables defining those most committed to Supreme Court decisions (Adamany and Grossman, 1989).

Adamany and Grossman (1989) looked closely at Congress's actions, ideological factions, and the ideology of those placed in strategic positions to explain the "difficulty of enacting court-curbing legislation" during the 1982 session (p.214). Specifically, they concluded that it was the liberal nature of the activists in strategic positions in Congress that strengthened the congressional support of Court decisions.

Perhaps the greatest flaw in drawing their conclusions was that their study did not involve data from any members of Congress. Instead, they imposed upon congressional leaders the characteristics of the Wisconsin sample and other samples they had consolidated. This researcher's study obtained data directly from congressional staff regarding the degree of perceived influence of special education case law on the development of the 1997 IDEA discipline amendments.

Miller (1993) conducted interviews using 12 open-ended questions designed to explore individual Congress member's agreement with and support for agency, court, and committee decisions. While not stating a specific hypothesis, Miller (1993) proposed to explain the behaviors of individual members of congressional committees through an analysis of institutional factors that may have an impact on those behaviors.

The participants in Miller's (1993) study were from the US House of Representatives Judiciary, Interior and Insular Affairs, and Energy and Commerce committees. Miller (1993) chose these committees because of their overlapping memberships and their varying proportions of members who were lawyers.

Miller (1993) used a primarily qualitative approach, gathering his data from semi-structured interviews with over 75 members and staff in the US House of Representatives during the summer of 1989. Data were reported in charts as percentages. Quotations from participants were used throughout the results and conclusions reported.

Miller (1993) concluded that there was some common ground among committee perceptions. Committees studied held courts in "higher esteem" than they held agencies (p. 477). Those interviewed perceived courts to be less politically motivated in their decision-making process. He concluded that Congress was more likely to allow courts the final say in policy questions than it would allow agencies the final say.

Miller (1993) also reported some differences among committee perceptions. Committees with higher percentage of lawyers, the Judiciary Committee in particular, were less likely to attempt to propose legislation that would nullify court decisions. The Judiciary Committee was more likely to attempt to nullify agency policy decisions than court statutory interpretation or constitutional decisions. The Energy and Commerce Committee had less respect for courts than the Judiciary Committee, seeing courts as "just one more player in the game of politics" (p.482). The Interior and Insular Affairs Committee, primarily focused on constituency demands, rarely reacted to court decisions because of their low saliency.

Miller's (1993) research again added credence to this researcher's belief that court decisions were an important factor influencing those key actors involved in the development of the 1997 IDEA discipline amendments. Miller's (1993) study, however, did not gather and analyze the data in relation to one piece of legislation, as this study

did. Instead, US House of Representatives committee members' behaviors were analyzed in relation to several committee decisions about several pieces of legislation.

These studies established that courts' decisions were given attention, and they discussed the degree of legitimacy some legislators gave these decisions. These studies focused on the influence of court decisions as a single variable, and they did not attempt to determine if any of the other factors identified for examination in this study interacted with court decisions to influence the degree to which case law was codified or rejected.

None of the research cited above examined exactly the research questions in this researcher's study. Nor were these studies conducted in the manner designed by this researcher. While supporting the use of qualitative data to investigate the degree of influence of federal court decisions upon lawmakers, current research did not address doing so with regard to the key actors involved in the development of the 1997 IDEA discipline amendments.

Special Interest Groups

Throughout the literature, the terms pressure group, interest group, and special interest group are used interchangeably. For the purposes of this study, this researcher preferred Murphy's (1973) description of an interest group as an "organized group with common objectives" that uses one-on-one meetings to "influence public officials for some particular public policy" (p.6; p.62).

Over the years, researchers conducted studies attempting to determine the degree of influence special interest groups have had in the development of state and federal

legislation. Virtually all of these studies were quantitative in nature. The conclusions drawn from these studies often contradicted one another.

The number of special interest groups has increased since the 1930's, and it is expected that the number of interest groups will continue to increase. Haider-Markel (1997) concluded from a quantitative study that rather than compete for new members, new interest groups find issue niches and attract membership based on the issues. When first formed, special interest groups meet with criticism, and therefore their long-term survival depends upon maintaining large memberships (Nownes and Cigler, 1995).

Sheppard (1985) theorized that special interest group activity at the federal level depended upon the numbers of beneficiaries of the legislation and the degree to which the cost is borne by constituents. For example, if many constituents were likely to benefit from legislation, and many constituents were likely to bear the cost of the legislation, then special interest group activity was least likely to occur. Conversely, if few were likely to benefit from the legislation and few were likely to bear the burden of the costs, then there was likely to be a high level of special interest group activity on both sides of the issue as these groups competed for the benefits and lobbied to have others help bear the costs (Sheppard, 1985). These theories are summarized in Table 2.12.

Sheppard (1985) based these theories on a review of historical records and on some research in the area of special interest groups. Sheppard's work focused primarily on the degree of special interest group activity, and not on the degree of special interest group influence in shaping legislation. Sheppard's works opened the door for exploring, based upon the theoretical framework established, the degree of activity and influence

various special interest groups had in shaping the opinions of the key actors involved in the development of the 1997 IDEA discipline amendments.

Another body of research addressed the tactics used by special interest groups to influence legislation. Again, these studies were primarily quantitative in nature.

Table 2.12

Special Interest Group Activity As a Function of Cost and Benefit

	Benefits of Legislation to Few	Benefits of Legislation to Many
Costs of legislation borne by few	Most likely to have high level of special interest group activity on both sides, competing for benefits and attempting to increase number of payees	Most likely to have high level of special interest group activity in opposition to legislation, from groups representing those whom it will cost
Costs of legislation borne by many	Most likely to have high level of activity in favor of legislation by special interest groups representing beneficiaries and high level of special interest group activities in opposition by those representing payees	Least likely to have special interest group activity

Steel, Pierce, and Lovrich (1996) conducted a study to compare empirically the resources available to public and private special interest groups and the strategies used by these groups to influence federal forestry policy. The study required analysis of data obtained from surveys returned by special interest groups representing private interests (businesses) and special interest groups representing public interests.

The researchers concluded that special interest groups representing public interests were characterized by a relatively higher degree of public support and relatively fewer financial resources. Such groups wielded influence by mobilizing public support to pressure governmental decision-makers.

Conversely, special interest groups representing businesses were characterized by relatively less public support and relatively more in the way of financial resources. These groups tended to wield influence by using traditional lobbying tactics and by contributing money to campaign funds of selected government officials (Steel, Pierce, and Lovrich 1996).

Bailey (1975) conducted a two-year study concerning the activities of education-focused special interest groups in Washington, DC, from 1972-1974. Bailey considered special interest group as attempting to influence legislation if the organization contacted or urged clientele to contact legislators and share a specific point of view relating to an issue, or if the special interest group openly advocated or rejected a specific piece of legislation in total or in part. Bailey obtained data from congressional documents and from special interest group interviews and literature. He analyzed the data statistically to determine how specific, education-focused special interest groups attempted to influence legislation being developed in Washington, DC.

Bailey (1975) concluded that the groups being studied had goals of (1) protecting their clientele from "harm" (p.30); (2) obtaining rules and resources favorable to their clientele's perceived interests; and (3) gaining respectability and recognition. These special interest groups attempted to reach their goals by focusing on limited numbers of

legislators (approximately six). Rather than try to persuade the legislators with hard data and quantitative research, these groups attempted to gain "sympathetic consideration" by sharing personal stories (p.64). These groups perceived public hearings to be mere formalities and preferred to concentrate their efforts behind the scenes in one-on-one meetings.

Davis (1995) conducted a case study of public special interest group activity during the consideration of mining legislation in Oregon. In this instance, these special interest groups relied on expanded communications and the use of symbolism as strategies to influence state legislators. They used themes tied to emotional issues and expanded attention to their cause by heavily utilizing media.

These studies supported this researcher's claim that special interest group activity influenced key actors involved in the development of the 1997 IDEA discipline amendments. These studies, however, relied on information obtained only from special interest groups. They did not attempt to investigate, from the perspective of members of Congress or their staff, the degree to which special interest group activities influenced key actors involved in the development of federal special education legislation.

Special interest groups appeared to work more closely with agencies and committees having similar perspectives about an issue (Hamm, 1983). Kollman (1997) conducted a study to determine how special interest groups choose which congressional committees to lobby. Kollman (1997) developed instruments to measure congressional committee members' ideology and certain special interest groups' ideologies and behaviors. Using bivariate correlation and t-tests as statistical analyses, Kollman (1997)

concluded that there was a positive correlation between ideologies of interest groups and the ideologies of the committees they lobby.

Several studies attempted to determine the degree of influence special interest group activities have had on resulting legislation. From the research, no clear conclusions could be drawn. Research conducted in the 1950's and 1960's suggested that special interest groups had little influence on federal legislation. Studies conducted within the last twenty years suggested special interest groups have been more successful in having their wishes reflected in federal legislation (Smith, 1995).

Most researchers agreed that no direct causal link could be drawn from special interest group activity and congressional roll call votes favorable to these groups (Smith, 1995; Evans, 1996; Sheppard, 1985). The influence of special interest groups could not be measured empirically because of the covert and complex nature of their activities (Sheppard, 1985). Hard data on their activities were generally not available or were difficult to acquire (Caldiera and Wright, 1998). Between the inception of interest group activity and the congressional voting on legislation, many variables could have intervened that would have increased or decreased the likelihood of decisions being made that were favorable to special interest groups (Evans, 1996).

Furlong (1997) used surveys to measure special interest groups' perceptions of the influence they had in attaining rules and policies favorable to them. He determined that special interest group influence was a function of seven independent variables, such as legitimacy (age) of the organization and type of policy. In their critique of such studies, Jackson and Kingdon (1992) concluded that there was too much subjectivity in

selecting accompanying independent variables for study, and that selecting inappropriate independent variables would have given inflated values to other independent variables chosen for study.

Smith (1996) conducted a case study investigating the degree of influence of special interest groups on federal legislation. He used information available regarding the House and Senate's efforts to create a separate Department of Education in 1979. He used this case to test his hypotheses that

> interest groups could create situations such that congressional members would not oppose the interest groups' position;
>
> interest group influence depended upon congressional members' interpretation (ability to predict consequences of supporting various positions) and explanation (ability to successfully explain their opposing position to other influential key actors) processes; and
>
> interest group influence was a function of how well its political and lobbying activities affected interpretation and explanation processes of congressional members.

Taking a quantitative approach, he collected data on reported positions of members of Congress throughout two months of the debate. He tracked special interest group activity during this time period as well. Smith (1996) applied appropriate statistical analyses to his data and reported the following conclusions:

> interest groups were able to strongly influence the extent to which congressional members publicly opposed interest group positions;

> interest groups had the capacity to create situations in which congressional members would rarely oppose special interest group positions; and statistical analyses of quantitative data did not capture the influence of relationships between interest groups and congressional members.

Again, these studies reinforced this researcher's belief that special interest group activities influenced key actors involved in the development of the 1997 IDEA discipline amendments. What was unique about this study was that it was qualitative, it uncovered perceptions of degree of influence from both legislators and special interest groups representatives, and that it focused on two sections one piece of special education federal legislation. In so doing, the researcher uncovered some clues as to the complexities of the relationships, consideration of other factors, and decision-making processes at work during the drafting of the 1997 IDEA discipline amendments. None of this was satisfactorily explained by current research on special interest group activity and influence.

Federalism

A review of the literature revealed many theoretical and philosophical writings related to federalism. At the base of them all was an underlying theme of federalism as power sharing. To better understand these writings, the following definition of federalism is repeated:

> ... the mode of political organization that unites smaller polities among general constituent governments in a manner designed to protect the existence and authority of both national and subnational political systems, enabling all to share

in the overall system's decision-making and executing processes (Elazar, 1972, p. 2).

Current theory suggests that federalism should not be viewed as a continuum of totally centralized to totally decentralized authority and responsibility (Elazar, 1987). Rather, the integrity of federalism is preserved by an "intricate framework of cooperative relationships" designed to best serve the needs of citizens (Elazar, 1972, p.2). Federalism as a system also reflects cooperation and the means by which conflict among levels of government is managed and limited. The existing system of federalism contains elements of centralization (policies controlled by the national government), decentralization (programs delegated to states and locales), and noncentralization (policies originating with and controlled by states and locales) (Wildavsky, 1998).

Elmore (1986) mirrored this philosophy in his presentation of doctrinal, functional, and strategic views of federalism. Although mentioned previously in the historical perspective, it is worth review here.

A doctrinal view of federalism provides a description of various levels of government and their functions. It presumes that each level of government (national, state, and local) specializes in certain functions and has responsibility for those functions. There is a clear, distinct division of labor (Elmore, 1986).

A functional view of federalism supports the belief that the division of labor is less clear. This view presumes that intergovernmental ties are necessary for national or state policy to be effectively implemented at state and local levels, respectively. While

the levels of government remain distinct, working relationships emerge across these levels to ensure proper policy development and implementation (Elmore, 1986).

A strategic view of federalism holds that various levels of government work in an organized fashion to influence one another in policy development and implementation processes. The strategic view of federalism is more prominent in instances when the national government increases requirements of the states without increasing funds to the states to carry out the increased responsibilities (Elmore, 1986).

Wildavsky (1998) took a more culinary approach when describing his models of federalism. He suggested that federalism can be of the "layer cake," "marble cake," or "fruitcake" variety (p.55).

Layer cake federalism proposes that the federal, state and local levels of government are distinct, and that their functions and responsibilities are just as distinct. These distinct functions and responsibilities are not interrelated and are not shared among the governmental levels (Wildavsky, 1998).

Marble cake federalism proposes that the levels of government may still be distinct, but their functions and responsibilities are somewhat intertwined. It is still possible, however, to distinguish one level of government's functions and responsibilities from another (Wildavsky, 1998).

Fruitcake federalism proposes that the purposes and functions of the various levels of government are not well defined. The blending of power, responsibility and benefits results in confusion. Under these conditions, hostility rises as it becomes impossible to distinguish who has gained or lost power and benefits (Wildavsky, 1998).

Research suggested that efforts to place all current policy developments into one federalism box would be futile and would be a mistaken application of the various models and views. The term "federalism" is no longer taken to mean a clear delineation of functions and responsibilities of levels of government. Instead, there is an understanding of a variety of intergovernmental relationships that change and shift as needed to ensure policy implementation. Views and philosophies are shifted depending upon perceived advantages and disadvantages to stakeholders, and are based on economic benefits to the stakeholders represented at various governmental levels (Wildavsky, 1998).

According to Shapiro (1995), the most effective national programs began with policy set at the national level, with states given the authority to shape the resulting programs to meet the "complexion and shape" of each individual state in which it is administered (p.77). Peterson (1995) suggested that the federal government should focus on those policies which promote redistribution of resources among "haves" and "have nots;" states and localities should focus on those policies which develop economic growth (p.17).

Two common themes emerged when exploring under what conditions the national government determined to centralize a policy or set of procedures. When the federal government increased federal funding for a program, then policies regarding the program were likely to be more centralized (Wildavsky, 1998). When the federal government perceived that states could not or would not comply with laws, then federal intervention

and centralization of policies were likely to result (Elazar, 1972; Cole, Stenberg, and Weissert, 1996).

The review of literature revealed common theories about the trend of federalism in the United States. Theories suggested that the process of devolution would continue to result in the passing down of some responsibilities to lower levels of government (Gold, 1996). Continued reductions in federal funding for some programs would continue, and funding reductions would be accompanied by noticeable reductions of the federal government's role in those same programs (Schram and Weissert 1997). Especially under Republican Party influence, the federal government would continue to reassign power and responsibilities between and among levels of government such that all would retain elements of autonomy (McClay, 1995).

Recently researchers closely analyzed Supreme Court decisions to determine the federalism philosophy reflected in the Court's decisions. By scrutinizing the various Justice's opinions representative of the majority, the studies concluded that the Court, under Chief Justice Rehnquist, has been attempting to limit Congress's power to control states (Schram and Weissert, 1997; Palmer and Laverty, 1996).

Because research indicated that case law may have had an impact on federal legislation, these Supreme Court decisions were noteworthy in relation to this study. In a sense, these studies merged federalism and case law as factors having the potential to influence key actors involved in developing federal legislation. None of the studies, however, addressed the influence of case law and federalism philosophies on key actors who developed the 1997 IDEA discipline amendments, as did this study.

Mintrom and Vergari (1997) used the previously discussed federalism theories and available historical document data to analyze the federal government's role in various education policies. They noted that federal funds provided for education had increased from 1.4% in 1945 to 6.9% in 1993. They noted that the federal government's involvement in developing education policy has also increased during this time period. To support their claims, they cited the following reforms promoted by the Clinton administration: development of national standards; open enrollment plans and charter schools; allowances for private contracting of public school functions; and voucher programs. From their perspective, these federal innovations were an effort to increase states' accountability for providing quality public education and have the potential to "recast intergovernmental relations" (Mintrom and Vergari, 1997, p. 156).

Peterson (1995) used special education legislation as an illustration of the federalism theories described above. From his perspective, when providing funding for special education in the 1960's the federal government centralized policy regarding special education as a means of ensuring that policy was being implemented. However, after a time the federal government perceived that state special education programs were inadequate and that students with disabilities were still being excluded from public education systems. Therefore, in the 1970's, the federal government centralized further special education policy (Peterson, 1995).

While the above two studies were interesting applications of theory, they were just that. Neither study provided data to support the conclusions. The studies indicated that shifting views of federalism may have had an impact on federal policy, a factor that

this researcher investigated more fully through interviews with congressional staff regarding the development of the 1997 IDEA discipline amendments.

The number of hearings and debates conducted by congressional committees and subcommittees was evidence that the issue of federalism has been an apparent area of concern for Congress. Federal control has been perceived to be inversely related to the degree of trust in and among various levels of government. As Belaga stated during recent congressional hearings, "This tension is very real and it forces us to take a look at the role of the government and the possible lines of responsibility between all of the players" (The federalism debate ..., 1995).

The literature provided a sound framework from which to explore the federalism philosophies and views present during the development of the 1997 IDEA discipline amendments. The true influence of varying federalism philosophies upon key actors could only be determined with the data made available through this study.

Legislation

Research has been conducted regarding factors influencing the development of legislation at the state and federal level. These studies consisted of quantitative and qualitative research methods.

Goren (1997) analyzed the content of the Americans with Disabilities Act and the 1997 Individuals with Disabilities Education Act. In his conclusions, he shared what he perceived to be the commonalties of (e. g., stipulating certain rights of the disabled) and differences between (e. g., definitions of disabilities) the two pieces of legislation. He indicated that these two pieces of legislation gave support to one another. His conclusion

that the two Acts supported one another was logical in light of the presentation of his content analyses. His was not a tightly designed research study, however, and there were no empirical data to support his claims.

Goren's (1997) study added support to this researcher's belief that other legislation may have been a factor influencing the key actors involved in developing the 1997 IDEA discipline amendments. His study did not provide interview or other data to support his claim, as did this study.

Roberson's (1987) quantitative descriptive study investigated the factors that influenced Virginia legislators to vote certain ways on 12 state bills relating to education. From a review of literature, he determined that the five factors to be investigated were: constituents, colleagues, interest groups, staff, and personal feelings. By completing a questionnaire, all state legislators chose which factor(s) most influenced their vote on each of the bills relating to education that were presented in the 1986 Virginia General Assembly.

After appropriate statistical analyses, Roberson (1987) concluded that at least one of these five factors had statistically significant influence on legislators' decisions on one-half of the bills. Interest groups were a statistically significant influence 67% of the time, and staff were a statistically significant influence 50% of the time (Roberson, 1987).

Roberson's (1987) study borrowed concepts from earlier studies at the federal level by Milbrath (1963). Over a one-year period in the early 1960's, Milbrath (1963) conducted interviews with a random sample of 101 Washington lobbyists and 38

members of Congress or their staff. The purpose of his study was to determine the influence of lobbyists and other factors on the decisions made by members of Congress as they developed and voted on legislation. He concluded that in addition to lobbyists, staff and colleagues were influential in shaping federal legislators' decisions about issues and laws under discussion. He determined that the communications network and interrelationships were complex. It was, therefore, hard to isolate any one factor's influence in guiding Congress members' decisions about legislation (Milbrath, 1963).

Both of these studies were relevant to this study because they both relied on reviews of research to identify potentially influential factors, as did this study. Each researcher concluded that staff may have been be a factor influencing Congress members' opinions and decisions. Sharpes (1987) suggests further, "Staff can control the elements of legislative policy by controlling the content" of information provided to Congress members and to special interest group representatives (p.113). Staff as an influential factor was not uncovered in this study's review of historical documents, and it became another factor for the study to explore.

Both Roberson's (1987) and Milbrath's (1963) studies fell short of addressing the research problem in this study. Both identified and focused upon people (e. g., constituents and staff) as influential factors rather than events, as did this study. In addition, Roberson's (1987) study was at the state level, and neither his nor Milbrath's (1963) study addressed special education legislation in general or the 1997 IDEA discipline amendments in particular.

A review of research uncovered several case studies of special education legislation. These studies investigated both state-level and federal-level legislation.

Identification of key actors and their roles was an important aspect of several case studies of state-level special education legislation. Individual members of the state legislature, the governor, the director of the state board of education, and representatives of certain special interest groups helped shape Pennsylvania's special education regulations and standards (George, 1991). Analyses of written records, archival materials, and interviews revealed that the development of Washington State's special education legislation was influenced by parent support groups, goal-directed planning, and complex yet efficient communication (Holm, 1991).

Geary (1992) conducted a case study of three Utah bills enacted over a 15-year period. His study revealed that single-issue interest groups, previous and current legislation, political conditions, and prediction of policy effects were influential in shaping these bills.

One case study of state-level special education legislation focused on only one aspect of that state's legislation. Baxt's (1997) was an historical case study of the development of inclusion legislation in Texas. She defined inclusion as the placing of special education children in classrooms with regular education children for at least part of their instructional day. Using archival data, observations, and interviews with persons knowledgeable about the research problem, she found that two factors that influenced legislators to support inclusion. Legislators were influenced by their own beliefs that

inclusion was best for these students, and they were influenced by a small number of very active special interest group representatives (Baxt, 1997).

These studies were of interest because they were case study designs using documents and interviews as data sources. These designs and methodologies were similar to what used by this researcher. They also focused on special education legislation, as did this study. None, however, focused on federal level legislation, and none addressed the development of the 1997 IDEA discipline amendments.

Four studies investigated development of federal-level special education legislation. All were case studies, and all attempted to explain factors influencing the development of the legislation.

Colachico (1985) used interviews and archival data to convey a history of the development of PL 94-142, the Education for All Handicapped Children Act (EAHCA). Through his study he identified key actors and their roles, described their rationales and tactics, and described those factors influencing the development of the legislation. He concluded that case law and special interest groups were influential in PL 94-142 being developed and signed into law (Colachico, 1985).

Both Coleman (1990) and West (1988) investigated the amendment to 1986 federal special education legislation allowing parents to seek damages in the form of attorney's fees from school divisions found by courts to be not meeting the educational needs of their children. Coleman (1990) conducted an historical case study that reviewed legislation and case law pertinent to the development of the 1986 federal special education legislation. West (1988) analyzed data gathered from archival records,

documents, observations, and interviews with key actors. Both concluded that case law was influential in the development of the amendment. Also, framing the issue as a civil rights issue had an impact on the perceived importance of the legislation. West (1988) also concluded that special interest groups and parents of handicapped children were factors that influenced legislators to support the amendment.

Read's (1996) study explored the interactions among interest groups, Congressional staff members, and situational variables to explain the development of the highest personnel standard amendment to the 1986 reauthorization of the Education for All Handicapped Children Act. The highest personnel standard amendment required that school divisions hire the most qualified staff to teach special education children (Read, 1996).

Read (1996) explored these interactions through various federalism frameworks. She conducted an historical analysis of archival materials, documents and court cases as a means of identifying those factors potentially influential in the development of this standard and to lay the groundwork to explore these factors more completely.

After the historical analysis was complete, Read (1996) interviewed ten special interest group representatives and Congressional staff who were deemed to have knowledge about the development of this amendment to the 1986 special education federal legislation. Participants were asked to respond to questions about: roles of the states and role of the federal government in developing the personnel standard amendment; the role of certain special interest groups in the development of the personnel standard; factors considered in the development of the personnel standard; and

compromises made that resulted in the personnel standard being included in the federal legislation (Read, 1996).

Read (1996) analyzed data inductively. Historical documents were critically evaluated internally (for accuracy and bias) and externally (for authenticity). Interview data were analyzed to identify emergent themes and patterns. Themes were identified across all data sources and data were categorized. From the data, Read (1996) concluded the following:

> special interest group activity was influential in the development of the highest personnel standard;
>
> those supporting federal intervention through legislation did so because of lack of trust in the states' ability or willingness to establish a state standard for personnel;
>
> the most influential and active special interest group employed activities resulting in extensive communications and a broad base of support;
>
> this particular amendment to the 1986 legislation was not perceived to be as important as other amendments; and
>
> timing lead to relatively quick passage of the amendment, as little time was allotted by Congress to debate its content.

Read's (1996) case study of the development of an amendment to federal special education legislation was similar in design to this study's. She used an historical perspective to lay the groundwork for what would be explored further in the study, and she interviewed available congressional staff to learn their perspectives.

Read's (1996) study lent strength to the purposes and design and methodology used by this researcher. Her study, however, addressed an amendment developed over ten years ago. This still left unanswered questions surrounding the factors influencing the key actors involved in the development of the 1997 IDEA discipline amendments, and this researcher's study answered those questions.

CHAPTER 3: DESIGN AND METHODOLOGY

Purpose

This study focused on the reauthorization of the 1997 Individuals with Disabilities Education Act over an 18-month period from January of 1996 through June of 1997, which was when President William J. Clinton signed the Act into law. The purpose of this study was to describe and analyze the factors influencing the key actors involved in developing sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act (IDEA), from their own perspectives. The review of literature suggested that factors to be investigated should include case law, special interest groups' activities, differing perspectives of federalism and other federal legislation related to education and to individuals with disabilities.

Organizational Framework

To achieve the purpose, the following foreshadowed problems were proposed, modeled after an approach taken by Childs (1997):

1. Who were the key actors in the framing of the 1997 IDEA discipline provisions? What were their roles and how did they exert their influence?
2. How did case law regarding discipline of students with disabilities influence the framing of the 1997 IDEA discipline provisions?

3. Which special interest groups were influential in framing the 1997 IDEA discipline provisions, and how did they exert their influence?

4. How did recently passed federal legislation regarding education or individuals with disabilities influence the drafting of the 1997 IDEA discipline provisions?

5. Which federalism philosophies influenced the development of the 1997 IDEA discipline provisions?

6. Was the change in processes by which this legislation was drafted and passed considered to have significance?

Design

While a review of historical documents suggested certain events may have influenced development of special education legislation over time, these documents did not show conclusively which factors most influenced key actors who developed the discipline amendments of the 1997 IDEA. It must be acknowledged, therefore, that in studying these historical documents neither the documents themselves nor the information they contained were sufficient for explaining this phenomenon.

Because the purpose of this study was to describe the factors influencing key actors involved in the development of the 1997 IDEA discipline provisions and to do so from their perspectives, a qualitative design was best. A qualitative study is built upon the philosophy that social context is key to understanding a social event (Neuman, 1994; Marshall and Rossman, 1995).

It was also necessary to select a design that would allow flexibility in procedure data collection, based upon events that might occur and based upon emerging data

throughout the study. One characteristic of qualitative research is its ability to be fluid and changing through constant comparative methodology (Bogden and Biklen, 1992).

Case studies allow the researcher to become immersed in the data sources (Neuman, 1994). Case studies also allow the researcher to investigate complexities of a single phenomenon in depth (McMillan and Schumacher, 1997). Therefore, a case study was the appropriate approach to answer the research questions in this study. A case study allowed a detailed examination of one event: the development of the 1997 IDEA discipline provisions.

The proposed interview questions were revised slightly during the study, based on emergent themes and topics identified by the researcher as part of the data analysis process. This resulted in slight revisions of the design and methodology as the study progressed.

Sample Selection

The sample was a nonprobability purposive sample. The sample was chosen because each person in it possessed specific characteristics deemed important and relevant by the researcher. The researcher chose an elite sample composed of those most knowledgeable about the research questions. Such participants are known as key informants (Weiss, 1994).

Identification of these key informants came initially from an analysis of historical documents from 1995-1997 describing the 1997 reauthorization of IDEA. This included but was not limited to special interest group newsletters and journals, listings of Bill

sponsors, Senate and House reports, and testimony at hearings. Names of individuals and organizations mentioned were listed, with those mentioned most frequently listed first.

To obtain a richer understanding of the factors influencing the development of the discipline amendments of the 1997 IDEA, it was necessary to include in the sample participants with differing opinions about the amendments. For that reason, the researcher included those key informants who supported the amendments and those key informants who opposed the amendments.

The sample was subdivided into two main sub-samples representing government and special interest group key informants (see Figure 3.1). Potential government key informants were selected from congressmen, congressional staff, and the US Department of Education. Potential special interest group key informants were chosen from those organizations representing individuals with disabilities and from those organizations representing educators.

The list of potential key informants was shared with the executive director and the director of a national organization representing state superintendents of pubic schools. They reviewed the list of potential key informants and confirmed that six were most knowledgeable about and heavily involved in reauthorization efforts. The director provided names of three additional key actors. Both the director and executive director gave the researcher permission to use their names when contacting key informants for interviews.

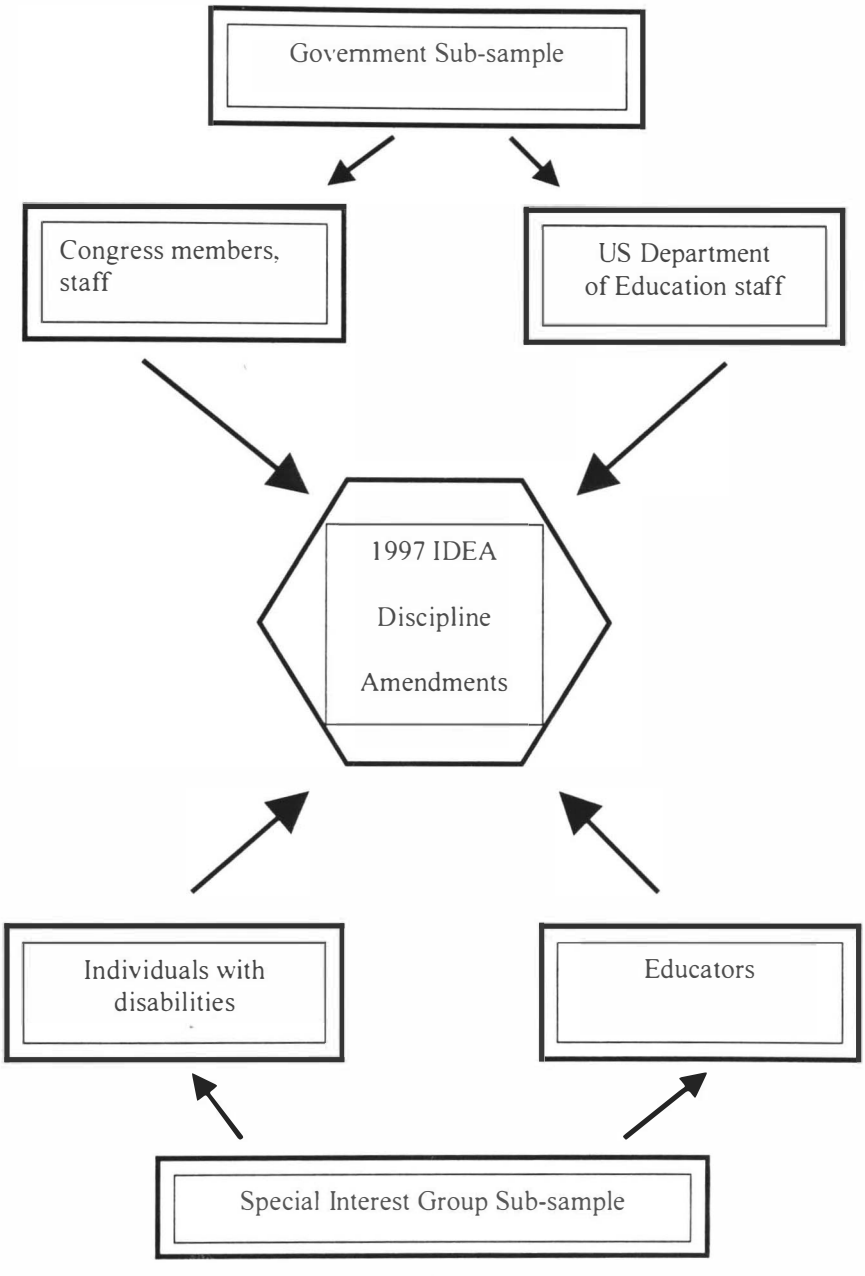


Figure 3.1. Key Informant Sub-Samples

The researcher selected five key informants from the special interest group sub-sample and six key informants from the government sub-sample. Four key informants from the special interest group sub-sample agreed to interviews. Five key informants from the government group sub-sample agreed to interviews.

Using "snowball" sampling techniques described by Bogden and Biklen (1992), the researcher asked each key informant to provide the names of key actors having knowledge about the research question. Key informants from the special interest group sub-sample named those already selected as part of the government sub-sample. Key informants from the government sub-sample named each other.

Confidentiality of all key informants was maintained to the greatest extent possible. Key informants' names were coded to identify them as belonging to the special interest group (S) or government (G) sub-sample, to identify their roles, and to identify their gender. The codes for special interest group key informants and government key informants are listed in Tables 3.1 and 3.2, respectively, along with positions held and descriptions of their roles in the reauthorization process.

Table 3.1

Special Interest Group Sub-sample Key Informants

Code	Position Held	Role During Reauthorization
SEF1	Director, special interest group representing general education administrators	Brokered lobbying efforts to other special interest groups
SDF2	Policy analyst, special interest group representing individuals with disabilities	Communicated with key actors; attended public hearings

(table continues)

Code	Position Held	Role During Reauthorization
SDEF3	Director, special interest group representing special education administrators	Communicated with key actors; participated in closed-door negotiations with other special interest group lobbyists to draft legislation in 1996; testified at public hearings in 1997
SEF4	Lobbyist, special interest group representing general education administrators	Communicated with key actors; participated in closed-door negotiations with other special interest group lobbyists to draft legislation in 1996; testified at public hearings in 1997

Table 3.2

Government Sub-sample Key Informants

Code	Position Held	Role During Reauthorization
GUM1	Agency head during Bush administration	Halted efforts to include discipline in IDEA, 1990-91
GUM2	Director, US Department Of Education	Developed administration's proposal; participated in closed-door negotiations to draft 1997 IDEA; attended public hearings
GHM3	Staff for high-ranking Republican in House	Participated drafting House version of IDEA in 1996; participated in closed-door negotiations to draft 1997 IDEA; attended public hearings
GSM4	Staff for high-ranking Democrat in Senate	Participated drafting Senate version of IDEA in 1996; participated in closed-door negotiations to draft 1997 IDEA; attended public hearings
GSM5	Staff for high-ranking Republican in Senate	Provided input for Senate version of IDEA in 1996; designed, facilitated consensus process by which 1997 IDEA was drafted and passed; participated in closed-door negotiations to draft 1997 IDEA; facilitated public hearings

Data Collection Strategies and Management Techniques

The primary source of data in this study came from interviews. When appropriate, documents were used to corroborate data obtained during interviews. Appendix C illustrates data sources for answering organizational questions and research questions.

Interviews

Interviews are appropriate for gathering data about a phenomenon from those who have direct experience with the phenomenon (Creswell, 1998). Interviews allow the researcher to gain a richer development of the information found in other sources (Weiss, 1994). This study used in-depth semi-structured interviews that helped guide the key informant, yet allowed the researcher to ask follow-up questions that clarified new ideas introduced by the key informants.

The interviews contained questions and probes to elicit information about the following:

what was intended and accomplished by including the discipline provisions in the 1997 IDEA;

the major areas of discussion relating to these discipline provisions;

the sections of the discipline provisions that were more easily agreed upon by all key actors and the bases for those agreements;

the sections of the discipline provisions that were most controversial and the bases for those controversies;

the ways these controversies were resolved; and

how specific time limits, disciplinary offenses, and disciplinary actions came to be included in the amendments.

The researcher utilized a set of interview questions developed for each sub-sample. Interview questions for each sub-sample are provided in Appendices D and E. The researcher developed and modified probing questions as needed based upon the responses of the key informants.

To increase the trustworthiness of the data, one representative from each sub-sample was asked to review the interview questions. Reviewers determined that the questions would likely provide the data necessary to answer the research questions. They determined that the tone of the interview questions was non-threatening.

Reviewers suggested two changes in terminology. Reviewers recommended using the term "1997 IDEA discipline provisions" rather than "discipline amendments of the 1997 IDEA" to avoid any confusion with efforts in the 106th Congress to amend those sections of the 1997 IDEA addressing discipline. Reviewers also suggested, when asking about federalism views, that the term "states' responsibilities" for providing education be used rather than "states' rights" for providing education.

Interviews were one-on one in-person interviews. Each interview lasted about one hour. Probing questions were asked as necessary to gain further data to help answer the research questions.

The researcher obtained permission to tape record each interview. During the interview, the researcher also took notes. These notes described the setting, key informants' nonverbal cues, and reactions of the researcher.

At the conclusion of the interview, the researcher reviewed the content of the notes with the key informants utilizing participant review techniques. Key informants were given an opportunities to verify the information they provided, to add information, or to request that information be deleted from the data source. The researcher gave each key informant an opportunity to request a copy of the typed transcript prior to its analysis. The researcher requested permission for follow-up contact, if needed, to clarify statements made by the key informants.

Documents

Documents were reviewed to corroborate data obtained from interviews, as indicated in Appendix C. Documents fell into categories of case law, Congressional records, legislation, and special interest group communications. Documents used to corroborate data gathered from interviews were coded to identify them as coming from special interest group (S) or government (G) sources. Documents and their codes are provided in Appendix F.

Role of the Researcher

When interviewing key informants, the role of the researcher is to create a trusting, comfortable atmosphere throughout the interview (McMillan and Schumacher, 1997). This researcher was open and honest about the purpose of the study, the manner in which data would be collected and analyzed, means by which confidentiality would be maintained, and the degree to which the results of the study would be shared.

The researcher approached this study from the perspective of a public school educator. In her former positions of teacher and school administrator, it was necessary

for her to ensure that special education policy was understood and implemented. In her current position as a university employee, it is her responsibility to maintain a solid understanding of special education policy in order to share this information with other public school educators during professional development programs facilitated by the researcher. With this perspective, the researcher maintained a neutral approach to the discipline amendments and to the factors potentially influencing key actors involved in their development.

Data Analysis

An inductive approach was used to analyze the data, as recommended by Marshall and Rossman (1995). Data analysis included segmenting, decontextualizing, and developing an organized system of classification or categorization of the data (McMillan and Schumacher, 1997). Such an approach brought, over a period of time, order and meaning to the data.

The researcher analyzed separately the interview transcripts and field notes from each interview. Doing so allowed initial sets of topics to be identified (Neuman, 1994). These are listed in Appendix G. Participant quotes illustrative of a topic were labeled in the transcript margin with the topic name. Using a cut and paste method, quotations from the transcript and other data from the field log and the personal journal supporting the topic were transferred to a table labeled with the topic. Each piece of data was coded back to its original source.

Across the interview data sets, topics were analyzed to determine which themes emerged. Using an emic approach, the themes were named to reflect the perceptions of

the key informants (Creswell, 1998). Emerging themes were: balance, emotions, stories, and federalism. All data illustrative of a theme were labeled as such. Again using a cut and paste method, data supporting the theme were transferred to a table labeled with the theme names. Each piece of data was coded back to its original source.

When analyzing the data categorized into topics and themes, the researcher paid careful attention to discrepant or negative evidence that emerged. The thick descriptions that were part of the analytic document enabled the researcher to identify patterns of the data. Logical cross analyses and diagrams showed the resulting interrelationships of topics, themes, and patterns. As part of the analysis, the plausibility of the patterns was explored, and plausible rival explanations were eliminated.

Procedures

The researcher contacted a national-level professional organization representing the interests of public school state superintendents. The staff of this organization advised the researcher as to the accuracy of the preliminary list of key informants. They confirmed six as heavily involved in the reauthorization process and they provided the names of three additional key informants. The staff provided background information about the key informants, and gave the researcher permission to use their names to gain access to the key informants.

Key informants were first contacted by phone. The purpose of the study was explained as was the methodology. Follow up letters were mailed to key informants along with a brief description of the study and preliminary interview questions. A sample letter with enclosures is provided in Appendix H.

The researcher interviewed all key informants in person. All interviews were tape recorded, and notes were taken during the interviews.

The researcher maintained a field log. The log contained the dates, places, and names of key informants of each interview. In the field log, key informants' names were coded to identify them as a government or special interest group source and to identify their gender. The log contained physical descriptions of participants and settings.

The researcher maintained a personal journal. The purpose of the journal was to record feelings and perceptions occurring during the interviews, during review of the data, and during preliminary analyses of the data. The journal also contained information from peer debriefing sessions.

Some analysis of the data took place while in the field. As topics or themes appeared to emerge during interviews, the researcher pursued them by asking probing questions. Such analysis resulted in slight changes to interview questions.

Data obtained during each interview was reviewed as soon as possible after each interview. This allowed the researcher an opportunity to clarify remarks, make additional notes, and to clarify statements that were illegible or hard to hear.

Data from the tapes and from the notes were transcribed and stored on computer disk. A hard copy was filed.

The researcher met regularly with a peer debriefer. At these meetings, impressions, thoughts and preliminary data analysis findings were discussed.

Maintaining Quality of the Study

The quality of case studies and other qualitative designs is maintained by incorporating strategies to enhance design validity (trustworthiness and rigor of the data) and to minimize researcher bias, and by incorporating components to generate use of the study and extension of findings (McMillan and Schumacher, 1997).

Enhancing Design Validity

Multiple data sets were used in the study. Data was available from relevant documents and from interview data that had been tape recorded and transcribed.

This study uncovered the perceptions of nine key informants most directly involved in the development of the discipline amendments of the 1997 IDEA. Verbatim accounts of participants' own language were the primary data used in the study.

Collecting and analyzing data from various interviews and documents allowed negative cases or discrepant data to emerge. These exceptions to patterns were explored as part of the data analysis process.

Minimizing Researcher Bias

A field log was used to log such objective information as dates, times, places, and names of key informants in each of the interviews. Means by which access was granted to participants was also noted in the log.

A personal journal was used to ensure that the researcher maintained a record of the data analysis process. The journal contained the researcher's rationale in making certain analytical decisions regarding the validity of the data and emerging themes and

patterns. The journal also contained information related to the meetings held with the peer debriefer.

The strict adherence to coding of all data provided a decision trail. Data filed by topics, themes, and patterns could be traced to the original source.

Generation of Use of the Study and Extension of Findings

Conclusions from case studies are not generalizeable in the same sense that results from certain quantitative studies are. There are, however, lessons to be learned that can be transposed to other similar situations. The design incorporated several components allowing generation of use and extension of findings. Specifically, the design:

described the role of the researcher throughout the interview process;

clearly described the rationale for purposeful sample selection and described the characteristics of each sample set;

employed multiple data collection strategies;

clearly described data analysis processes used and provided for thick descriptions;

addressed plausible rival explanations and interpretations; and

provided sufficient detail of methodology, design, and analysis to allow extension of its design for use in conducting other case studies investigating similar phenomena.

Limitations

The design of this study is a case study design, and, as such, its results are not generalizeable. The researcher did not intend for the results of this study to be generalized to explain the development of other federal legislation.

As part of the study, an historical overview of the United States Congress's development of special education legislation from 1966-1977 was necessary. However, this study was not intended to be an historical analysis of federal-level special education legislation. The historical overview was necessary to frame the rationale for exploring the influences of specific factors upon key actors involved in the development of the 1997 IDEA discipline provisions. The historical documents also served to corroborate data obtained through interviews.

All sections of the 1997 IDEA and section 504 of the Rehabilitation Act have implications for public schools educating students with disabilities. This study explored neither the development of other sections of IDEA nor section 504 of the Rehabilitation Act. This study was concerned only with the development of sections 612(a)(1)(A) and 615(k) of the 1997 IDEA.

Discussions and hearings regarding the amendments to IDEA took place for 18 months prior to its being signed into law in June of 1997. Interviews conducted with key informants required that they rely heavily upon their perceptions of what occurred almost two to three years earlier. As time and memory may have had an impact upon their recollections, appropriate documents were used to corroborate interview data, as noted in Appendix C.

Some negotiation meetings were closed and written records of them were not available for analysis. In these instances, the researcher used information provided by other key informants to corroborate the data. While perhaps not as accurate as

documents, multiple sets of interview data were still useful for corroboration, generating probing questions, and for providing some factual data.

Not all key actors were available for interviews. Despite this, the researcher was able to obtain data that could be used to describe and analyze those factors influencing key actors involved in the development of the 1997 IDEA discipline provisions.

The researcher accomplished this by interviewing key informants from special interest groups representing educators and individuals with disabilities. Two of the key informants from the special interest group sub-sample met with other special interest group lobbyists in closed-door negotiations in 1996 where they drafted two versions of IDEA that were presented to members of Congress. All key informants from the special interest group sub-sample participated in open hearings in 1997.

The researcher also interviewed key informants from the government representing the US Department of Education, both houses of Congress, and Republicans and Democrats. Four of the five key informants from the government sub-sample participated in closed door-negotiations and public hearings in 1997. The same four were involved in writing all sections of the final 1997 IDEA legislation.

CHAPTER 4: FRAMEWORK FOR ANALYSIS

Overview

Providing a framework for analyzing the data obtained in this study is a necessary first step towards understanding the description and analysis of the factors influencing the key actors who developed the 1997 IDEA discipline provisions. This chapter will, therefore, provide information regarding:

the purpose of the study;

profiles of key informants;

identification of key actors;

the need to amend IDEA;

origins of the 1997 IDEA discipline provisions; and

emergent policy issues revealed by the data.

Purpose of the Study

This study focused on the reauthorization of the 1997 Individuals with Disabilities Education Act over an 18-month period from January of 1996 through June 5, 1997, which was when President William J. Clinton signed the Act into law. The purpose of this study was to describe and analyze the factors influencing the key actors involved in developing sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities

Education Act (IDEA), from their own perspectives. These two sections of the 1997 IDEA are referred to as the 1997 IDEA discipline provisions.

Profiles of Key Informants

Data were primarily obtained through interviews with nine key informants. Identification of key informants came from a review of historical documents related to the reauthorization of the 1997 IDEA and from snowball sampling techniques.

Four key informants were from the special interest group sub-sample, and five key informants were from the government sub-sample. Codes and brief descriptions of the key informants are found in Tables 3.1 and 3.2.

The following profiles of key informants are provided to give more meaning to the data. Within each sub-sample, key informants are listed in order from those least involved in the development of the 1997 IDEA discipline provisions to those most involved in the development 1997 IDEA discipline provisions.

Special Interest Group Sub-sample

SEF1

This key informant currently works in Washington, DC, with a national-level professional organization representing general education administrators. In her current position as a director, she interacts with key members of Congress to lobby for educational issues.

She has had former experience in Washington politics, having been employed as a staff member in a high-ranking Republican senator's office. She is, therefore, well

connected politically. She is intelligent and has a good understanding of Capitol Hill's political machinery.

She did not involve herself or her organization in the development of the 1997 IDEA discipline provisions, preferring to "broker" this responsibility to a group represented by another key informant. As she stated, "We didn't want to spend energy on discipline when so many other issues in IDEA were of concern, and we knew we couldn't make a difference on the discipline issue."

SDF2

This key informant is a policy analyst for a national-level special interest group representing individuals with disabilities. She joined the organization in 1996, toward the end of reauthorization efforts of the 104th Congress. She formerly served as an administrator for the juvenile justice system in a state other than Virginia.

In 1997 she attended all of the public hearings scheduled as part of the consensus process put into place during the 105th Congress to reauthorize IDEA. She and others in her organization expressed their views by writing to and meeting with key members of Congress during 1997.

She is dedicated to the mission and beliefs of her organization and to doing what is best for all children. She encapsulated this by saying that this special interest group "... does not support cessation of services for any child. And that's something we're very strong on."

SDEF3

This key informant is the government relations director for a national-level special interest group that represents special education administrators. Because of the nature of this special interest group, she understands and represents the interests of educators as well as the interests of children with disabilities.

Beginning in 1996, she coordinated efforts with a special interest group representing public school administrators and took responsibility for tracking the proposed changes in the discipline amendments. In 1996 during the 104th Congress, she and other special interest group lobbyists participated in two weeks of intense, closed-door negotiations where two versions of IDEA were drafted and presented to key members of Congress for their consideration. In 1997 she attended and testified at public hearings, which were part of the consensus process established during the 105th Congress to reauthorize IDEA.

She articulated clearly those things that her organization wished to see accomplished by the 1997 IDEA discipline amendments. She stated:

> We represent administrators who are very sympathetic to other school administrators whether they be general ed or special ed. And I think that we wanted to safeguard the rights of the children while also ensuring that the other children in the classroom were able to enjoy all the benefit of their education experience.

SEF4

This key informant is a lobbyist for a national-level special interest group representing general education administrators. She came to work for this organization in 1994. She had formerly served as a lobbyist for another nation-level special interest group representing educators. She began her career as a special education teacher in 1975, the first year that P. L. 94-142 was enacted.

During the reauthorization of IDEA, she met with members of Congress and wrote letters on behalf of the organization. In 1996 during the 104th Congress, she and other special interest group lobbyists participated in two weeks of intense, closed-door negotiations where two versions of IDEA were drafted and presented to key members of Congress for their consideration. In 1997, she testified in public hearings that were part of the consensus process put into place during the 105th Congress to reauthorize IDEA.

The focus of her efforts during the reauthorization was on attempting to affect the language of the 1997 IDEA discipline provisions. She stated:

> My members feel very strongly about this issue [discipline]. The further we went in this process it was clear that we were going to be the only people who really stood up for general ed, in our view, on the discipline aspect. And we really went after some changes.

Government Sub-sample

GUM1

As a Republican, this key informant held a high-ranking position in the US Department of Education during the Bush administration. During his tenure in the US

Department of Education, he halted 1991 efforts to introduce discipline provisions into federal special education legislation.

This key informant is currently a director for a national-level special interest group representing general education administrators. While not directly involved in the last reauthorization of IDEA, his views and former activities shed light on Commonwealth of Virginia Department of Education v. Riley (1997), which was a key point of contention during the reauthorization.

He spoke with great frustration about the 1997 IDEA discipline provisions, stating, "Suspension and expulsion are local school issues. They [Congress] have no business getting into that."

GUM2

This key informant is the director of one of the offices in the US Department of Education. He was appointed to his position in 1993 and is a Democrat. He has served as a building level and central office administrator for two large urban school systems.

During the reauthorization of IDEA, he was responsible for developing the administration's reauthorization proposal. In 1996 and 1997 he was heavily involved in the reauthorization of IDEA. He and another member of the Department assisted in the development of the 1997 IDEA discipline provisions.

GHM3

This key informant is the president of a Washington, DC, based organization representing educational issues. During the reauthorization of IDEA, he served as staff to a high-ranking Republican in the House. In 1996 and 1997 he was heavily involved in

the reauthorization of IDEA. He and another member of the Congressman's staff assisted in the development of the 1997 IDEA discipline provisions.

GSM4

This key informant directs a policy center for a major university located in Washington, DC. He has recently joined the university after having been involved in Capitol Hill politics since the mid-1980's. He has a strong background in law and extensive experience with developing federal-level disability policy.

During the 104th Congress, he served as staff for a high-ranking Democrat in the Senate. In 1996 and 1997 he was heavily involved in the reauthorization of IDEA. He assisted in the development of the 1997 IDEA discipline provisions.

GSM5

This key informant serves as staff for a high-ranking Republican in the Senate. Most of his career has been in politics, and he has held this current position for several years.

Toward the end of the 104th Congress, he assisted in drafting a portion of IDEA that dealt with transfer of records. He was heavily involved in the IDEA reauthorization efforts of the 105th Congress. He assisted in the development of the 1997 IDEA discipline provisions.

All but two key informants were involved in the reauthorization of IDEA. The degree of involvement in the reauthorization and kind of involvement in the reauthorization varied among the remaining seven key informants. The relative degree of

involvement of each key informant in the development of the 1997 IDEA discipline provisions is shown in Table 4.1.

Table 4.1

Key Informants' Degree of Involvement in Developing 1997 IDEA Discipline Provisions

Sub-sample	Not Involved				Very Involved
Special Interest Group	SEF1	SDF2	SDEF3 SEF4		
Government	GUM1			GUM2 GHM3 GSM4	GSM5

All key informants provided data that allowed the researcher to describe and analyze the key factors influencing the key actors involved in developing the 1997 IDEA discipline provisions.

Identification of Key Actors

For the purposes of this study, the researcher identified as key actors those most closely involved in drafting the 1997 IDEA discipline provisions. All of the key actors came from the government sub-sample. Descriptions of these key actors follow.

GUM2

US Department of Education and its staff were mentioned three times in historical documents reviewed for this study. Four key informants named this key actor as being heavily involved in the reauthorization of the 1997 IDEA. They described him as being very concerned about special education legislation and as being very honest.

During the reauthorization of IDEA, he was responsible for developing the administration's reauthorization proposal. In 1997 he was heavily involved in the consensus process established during the 105th Congress to reauthorize IDEA. He attended the public hearings and listened to testimony. He participated in closed-door negotiations and helped draft the final legislation, including the 1997 IDEA discipline provisions.

He spoke with great emotion and very animatedly. Of his own role in the process he said:

> Basically my role in the reauthorization was developing the administration's reauthorization proposal ... We felt pretty strongly that there was a need to do some amendments to the law, given that it was twenty-plus years old ... My own personal view, as well as that of the career staff here, was that we really had to bring special education to a greater results orientation.

GHM3

The name of the House Republican that this key actor worked for during the reauthorization of the 1997 IDEA appeared four times throughout the historical documents reviewed for this study. Three other key informants named this key actor as having been heavily involved in reauthorization efforts. He was described by special interest group key informants as a "mover and a shaker" throughout the reauthorization process (SEF1, SDEF4).

During the reauthorization of IDEA, this key actor served as staff to the Republican chairman of the House committee responsible for drafting IDEA legislation.

He came to the committee in 1995, and his primary area of responsibility was disability legislation. As issues in other disability legislation became resolved, his focus shifted solely to the reauthorization of IDEA. In 1997, he was heavily involved in the consensus process established to reauthorize IDEA during the 105th Congress. He participated in closed-door negotiations and drafted the final version of the legislation, including the 1997 IDEA discipline provisions.

He is very politically astute. Describing his role he stated, "I was the chief staffer responsible for seeing that the legislation was ultimately introduced. In fairness and honesty, I handled everything that was technical, all the policy issues."

GSM4

The name of the Democrat in the Senate for whom this key informant worked during the reauthorization of the 1997 IDEA appeared twice throughout the historical documents reviewed for this study. Four other key informants named this key actor as having been involved in reauthorization efforts. They described him as instrumental in maintaining the integrity of the consensus process, and as someone who represented well his party's views.

During the 104th Congress, he served as the staff director and chief council for the Senate subcommittee charged with the responsibility of drafting the IDEA legislation. When this committee was disbanded at the beginning of the 105th Congress, he became the chief disability advisor for the Senate committee responsible for overseeing disability legislation. He was designated as the primary Democratic staffer to work on the reauthorization of IDEA. In 1997 he was heavily involved in the consensus process

established to reauthorize IDEA during the 105th Congress. He attended the public hearings and participated in closed-door negotiations to draft the final version of IDEA, including the 1997 IDEA discipline provisions.

He spoke thoughtfully and intellectually about his role in the reauthorization. He stated:

> I wanted to ensure that school systems had the flexibility that they needed to ensure that schools were safe and conducive to learning. And I wanted to ensure that when inappropriate behavior was identified, that there were steps taken to maximize the likelihood that that behavior would not reoccur.

GSM5

The name of the high-ranking Republican in the Senate for whom this key actor worked during the reauthorization of IDEA did not appear in the historical documents reviewed for this study. Six key informants named him as being very involved in 1997 IDEA reauthorization efforts. All six key informants spoke about him with great reverence. They applauded him for his efforts in bringing about passage of this Bill.

During the reauthorization efforts of the 104th Congress, he met with special interest group representatives and shared their views with the senator for whom he worked. He assisted in drafting a portion of IDEA that dealt with transfer of records.

He was heavily involved in the IDEA reauthorization efforts or the 105th Congress. He designed the consensus process by which this Bill became a law. He presided over the public hearings, which were part of the consensus process. He

facilitated the closed-door negotiations where the Bill was drafted, and participated in drafting the IDEA legislation, including the 1997 IDEA discipline provisions.

His perspectives reflected his experiences on Capitol Hill and reflected his experiences as a father of a child with a disability. He was humble about his involvement in the reauthorization of IDEA and stated:

> What really got me into it was being the Chief of Staff for [a high ranking senator] on an issue that was contentious for the Republican committee. It was more by chance than by grand design that I got involved in doing this.

All key actors belonged to the government sub-sample. They provided data through interviews that were valuable in answering the research questions. The codes and roles of the key actors are provided in Table 4.2.

The Need for Amending IDEA

All key actors agreed that IDEA needed amending. The director with the US Department of Education stated, "We felt pretty strongly that there was a need to do some amendments to the law to basically update it, given that it was over 20 years old" (GUM2). Speaking specifically about the issue of discipline, the chief of staff for a high-ranking Republican senator stated, "Once I got involved, it was clear that this was an issue which needed updating" (GSM5). The staff member for a high-ranking Democrat in the Senate posed the question that would guide the efforts of the key actors asking, "What is the message these amendments would send to local communities far, far away from Washington, DC?" (GSM4).

Key actors held different perspectives on the degree to which IDEA should be amended. These differing perspectives are expanded upon in the remainder of this study.

Table 4.2

Codes and Descriptions of Key Actors Involved in Developing 1997 IDEA Discipline Provisions

Code	Position Held	Role During Reauthorization
GUM2	Director in US Department of Education during Clinton administration	Developed administration's statement of position regarding IDEA reauthorization in 1996; participated in closed-door negotiations in 1997 to draft IDEA amendments; attended public hearings
GHM3	Staff for high-ranking Republican member of House	Developed IDEA draft amendments in 1996; Participated in closed-door negotiations in 1997 to draft IDEA amendments; attended public hearings
GSM4	Staff for high-ranking Democrat in Senate	Developed IDEA draft amendments in 1996; Participated in closed-door negotiations in 1997 to draft IDEA amendments; attended public hearings
GSM5	Staff for high-ranking Republican senator	Designed and facilitated consensus process by which 1997 IDEA was drafted and passed; participated in closed-door negotiations to draft IDEA amendments; facilitated public hearings

The Origins of Discipline Provisions in IDEA

Documents provided data to indicate that a short-lived effort was made in the early 1990's to include discipline provisions in IDEA. Some discussion in congressional subcommittees revolved around allowing corporal punishment of students with disabilities, if the parents and school personnel agreed to it (GI4-1). The request to include discipline in IDEA did not gain support from the Bush administration, however. A government key informant who served in the US Department of Education at that time stated, "[Discipline] is a local school issue. We had no business getting into that. I buried that thing (GUM1)."

Special interest group key informants and key actors agreed that as the 1990's progressed, discipline of students with disabilities became a growing concern. Numbers of students identified with disabilities were increasing, as were the numbers of disability categories. The staff member for a for a high-ranking Republican in the Senate indicated:

> When you look at the growth in IDEA students over the 20 years of the Bill, you've gone from the clearly physically and mentally disabled to those who have learning disabilities and other things ... The increase in parents' concerns about safety of their kids in school was going to be an issue that was going to overtake IDEA, if IDEA didn't try to get out in front of it (GSM5).

Educators and special interest groups representing them began to contact members of Congress with their concerns. A staff member for a high-ranking Democrat in the Senate stated:

> The regular education community felt that they were hamstrung in terms of what they could and could not do under the IDEA. That included school boards' associations ... and those representing principals. They found champions up here who otherwise had expressed concern about this issue and just kept meeting with members over and over again (GSM4).

A director from a special interest group representing special education administrators felt that these contacts might have precipitated efforts to include discipline in IDEA. She shared:

> It seems to me that it [discipline] arose because there were several members of Congress who were getting phone calls ... from local superintendents, principals in their districts, talking about the fact that they thought that disciplining kids with disabilities was a problem (SDEF3).

Federal legislation in 1994 addressed the issue of school safety. The Gun Free Schools Act of 1994 became law as part of the Elementary and Secondary Education Act (ESEA). The Act required that school divisions develop policies for immediate removal of students who brought guns to schools (GL4-2).

The IDEA in effect at the time of the passage of the Gun Free Schools Act stipulated that students with disabilities could not always be immediately removed from their current educational settings without prior written notice to and approval by the child's parents. Nor could the child be immediately removed if it was determined through a hearing that the child's behavior was related to his or her disability. IDEA also

stated that if parents did not agree to removal, the child was to remain in the current educational setting until the dispute was resolved (GL4-3).

It became quickly apparent to legislators that the two laws together created a conflict for schools. There was no clear policy on how to deal with a child with a disability who brought a gun to school. A director in the US Department of Education stated, "The issue of how that [Gun Free Schools Act of 1994] related to kids with disabilities was becoming prominent as a public policy issue" (GUM2).

In an effort to resolve the apparent conflict, Senator Jeffords proposed an amendment to IDEA. The Jeffords' Amendment, passed by Congress in 1994, allowed for immediate removal of a child with a disability who brought a gun to school to an alternative educational setting for up to 45 days (GI4-4).

Special interest group key informants perceived the Gun Free Schools Act and the resulting Jeffords' Amendment to IDEA to be the origins of federal legislation addressing discipline of students with disabilities. When asked about the origin, a policy analyst for a special interest group representing individuals with disabilities stated, "Probably Senator Jeffords. He was big on the discipline issues" (SDF2). A lobbyist for a special interest group representing general education administrators added, "That's where this discipline stuff first got in IDEA ... through ESEA [Elementary and Secondary Education Act, to which the Gun Free Schools Act is an amendment]" (SEF4).

Key actors connected the Gun Free Schools Act and the Jeffords' Amendment to the discipline provisions of the 1997 IDEA. They articulated the connections more clearly than did key informants from the special interest group sub-sample. A staff

member for a high-ranking Republican in the House said, "Pretty clearly, the Jeffords' Amendment was the genesis of this [discipline provisions]" (GHM3). A director in the US Department of Education expanded the perspective, stating:

> The issue of discipline to some extent from a political perspective, was an issue that was active all the time we were here. And it was an issue that Congress had been concerned about with the Gun Free Schools Act...which was directly dealing with the issue of discipline in schools. So there was a federalization to some extent on this [discipline] issue, as it related to all kids, really. IDEA actually became amended ... with what's called the Jeffords' Amendment. So the issue of amending IDEA in the area of discipline was on the table in 1994, which was before we even had a proposal to the Congress (GUM2).

According to key informants and key actors, there were three factors that were influential in initiating the inclusion of discipline provisions in the 1997 IDEA. These factors were special interest group contacts with members of Congress, and the passage of the Gun Free Schools Act and the Jeffords' Amendment in 1994.

Emergent Policy Issues Revealed by the Data

As the reauthorization of IDEA progressed and key actors became more immersed in the process of developing the discipline provisions, seven policy issues emerged that had to be given their consideration as they developed the discipline provisions. These issues were:

maintaining school environments conducive to learning;

safeguarding the rights of children with disabilities;

giving unilateral authority to school officials removing students with disabilities from school settings;

prescribing specifics of the discipline provisions;

determining when disciplinary action was warranted;

creating a double standard of discipline; and

ceasing educational and related services to children with disabilities who are suspended or expelled from school.

Policy Issues Agreed Upon

The special interest group key informants and the key actors recognized that maintaining school environments conducive to learning was policy issue upon which all agreed. They recognized that all agreed the rights of students with disabilities should continue to be protected by the 1997 IDEA.

Policy Issues Creating Controversy

Special interest group key informants and key actors agreed that maintaining school environments conducive to learning and protecting the rights of students with disabilities were policy issues that needed to be supported. They realized, however, that these two issues could potentially conflict with one another. A key actor who worked for a high-ranking Democrat in the Senate shared:

> We wanted to ensure that dangerous kids could be removed from the classroom because of teachers and other children. We didn't want teachers or kids to be put at risk. But we also wanted rights and protections for kids that had to be removed (GSM4).

A director for a special interest group representing special education administrators stated, "Safeguarding the rights of students with disabilities ... is an overarching theme. But we wanted ...[an] understanding that sometimes children do need to be removed from classrooms" (SDEF3).

Also, controversies arose between and among special interest groups and government representatives regarding these five remaining emergent policy issues:

giving unilateral authority to school officials removing students with disabilities from school settings;

detailing specifics of the provisions;

determining when disciplinary action was warranted;

creating of a double standard of discipline; and

ceasing educational and related services to children with disabilities who are suspended or expelled from school.

It became the task of the key actors to clearly define the controversies inherent in the policy issues, design a means by which the discipline provisions could be drafted, and to give considerations to various factors when developing the discipline amendments.

CHAPTER 5: LEGISLATIVE GOAL: DEVELOPMENT OF A "BALANCED" POLICY

Overview

The key actors' goal was to develop a federal policy for disciplining students with disabilities. To describe how that was accomplished, this chapter:

summarizes the roles of the key actors;

explains what was meant by "balance";

describes controversies within each of the emergent policy issues;

explains procedures used for developing a balanced policy;

describes factors influencing balance;

summarizes resulting 1997 IDEA discipline provisions; and

describes key informants' satisfaction with resulting 1997 IDEA discipline provisions.

Role of the Key Actors

The key actors in the development of the 1997 IDEA discipline provisions were:

a director in the US Department of Education during the Clinton administration (GUM2);

a staff member for a high-ranking Republican in the House (GHM3);

a staff member for a high-ranking Democrat in the Senate (GSM4); and

a chief of staff for a high-ranking Republican in the Senate (GSM5).

Explaining Balance

The key actors held different perspectives regarding the degree to which IDEA should be amended and what the 1997 IDEA discipline provisions should include. When talking specifically about the 1997 IDEA discipline provisions, a key actor who is a staff member for a high-ranking Republican in the Senate shared:

> The increase in parents' concerns about safety of their kids in school was going to be an issue that was going to overtake IDEA, if IDEA didn't try to get out in front of it ... What we were trying to do is figure out how to handle them [discipline provisions] fairly for the students so they get the best education, how to handle them fairly for every student and the teachers and the administrators as well ... That's a balance that nobody wants to lose, but it's easy to lose. The question is how to do it most effectively for the child and for the school. And that's some of what we tried to do (GSM5).

A key actor who served as staff for a high-ranking Democrat in the Senate provided a context from which to view this balance. He stated:

> I wanted to ensure that things were accomplished for children with disabilities recognizing history, recognizing the need to individualize discipline to make sure that it was meaningful and effective in accomplishing those objectives, and I wanted to ensure that what we did did not have unintended consequences (GSM4).

With "balance" as a framework, the key actors gave consideration to the specific policy issues around which the discipline provisions were developed.

"Balancing" the Policy Issues

As the reauthorization of IDEA progressed in 1996 during the 104th Congress, seven policy issues emerged that had an impact on the development of the 1997 IDEA discipline provisions. These issues were:

maintaining school environments conducive to learning;

safeguarding the rights of children with disabilities;

giving unilateral authority to school officials removing students with disabilities from school settings;

prescribing specifics of the discipline provisions;

determining when disciplinary action was warranted;

creating a dual system of discipline; and

ceasing educational and related services to students with disabilities who were suspended or expelled from school.

There were two emergent policy issues about which special interest groups and government representatives agreed. However, controversies arose between and among special interest groups and government representatives regarding five emergent policy issues. These areas of agreement and areas of controversy continued throughout the 104th Congress and into the 105th Congress.

Maintaining Environments Conducive to Learning While Safeguarding Rights of Children with Disabilities

Special Interest Groups' Perspectives

All key informants agreed that schools needed to maintain educational environments conducive to learning. A policy analyst for a special interest group representing individuals with disabilities summarized the perspectives of special interest group key informants by saying, "We didn't want teachers or kids to be put at risk" (SDF2).

Key informants agreed that the rights of students with disabilities should be protected. The director for a special interest group representing special education administrators illustrated this perception. She stated, "My members had the same concerns as the general disability community, which is safeguarding the rights of students with disabilities. I certainly think that is an overarching theme" (SDEF3).

The key informants realized, however, that these two issues could potentially conflict with one another. The director for a special interest group representing special education administrators stated:

> But I think we also wanted to see some logic in the system. We wanted to safeguard the rights of the children with disabilities while also ensuring that the other children in the classroom were able to enjoy all the benefits of their educational experience. Definitely a balancing act (SDEF3).

Perspectives of Key Actors

All key actors agreed that schools needed to be able to maintain educational environments conducive to learning. A staff member of a high-ranking Democrat in the Senate summarized the perception of the key actors. He stated, "I wanted to ensure that school systems had the flexibility they needed to ensure that schools were safe and conducive to learning" (GSM4).

The key actors agreed that the rights of students with disabilities should be protected. The staff member for a high-ranking Republican in the Senate reflected this perception stating, "What we wanted to be able to do was give parents [of students with disabilities], working with administrators and teachers, the greatest number of options possible to give each kid that best education possible" (GSM5).

The key actors involved in the development of the 1997 IDEA discipline provisions realized, however, that these two issues could potentially conflict with one another. The staff member for a high-ranking Democrat in the Senate shared:

> We wanted to ensure that dangerous kids could be removed from the classroom because of teachers and other children. We didn't want teachers or kids to be put at risk. But we also wanted rights and protections for kids that had to be removed (GSM4).

Summary of Perspectives

All key informants and key actors agreed that maintaining educational environments conducive to learning was a policy issue that was not in dispute.

All key informants and key actors agreed that the rights of students with disabilities should be protected. The means by which these two policy issues would be balanced became the focus of the efforts of the key actors involved in developing the 1997 IDEA discipline provisions.

Giving Unilateral Authority to School Officials In Removing Students with Disabilities from School Settings

Special Interest Groups' Perspectives

Perspectives varied among special interest group key informants as to the degree to which school officials should have unilateral authority to remove students with disabilities from school settings when these students exhibited inappropriate behaviors. One special interest group representing special education administrators felt that all discipline decisions should be left to school officials. The director of the special interest group stated:

> The discipline policies are generally within the purview of local school districts with broad guidelines from the state agency. I believe that there are protections [for students with disabilities] under IDEA, even without these discipline provisions ... Why, then, did they impose these ... in federal law? (SDEF3)

She acknowledged that providing unilateral authority to school officials in removing students with disabilities who exhibited inappropriate behaviors was sometimes misinterpreted. She stated, "The attitude of the parents was that you couldn't depend on school officials to keep disabled kids in school" (SDEF3).

One special interest group representing general education administrators felt that some limits to the unilateral authority of school officials were acceptable while others were not. This special interest group approved of school administrators being given unilateral authority to remove schools students with disabilities who brought weapons to school. The lobbyist for this special interest group said:

> For a lot of our members, they want a violent child away from other children for as long as they can have them away. We were pleased with the expansion from just guns under the 45-day removal to include other weapons (SEF4).

She shared that members represented by this special interest group also wanted the unilateral authority to remove students with disabilities from school for up to 45 days for other behaviors. She said, "It didn't go far enough. We wanted assault in there as well. Disruptive isn't in there, and it should have been. Seriously disruptive is what we wanted" (SEF4).

The special interest group representing individuals with disabilities felt that the unilateral authority given to school officials in removing students with disabilities from educational settings should be limited. Speaking in support of removal of these students for possession of weapons and drugs or for exhibiting dangerous behaviors, the policy analyst for this group said:

> On the serious offenses of weapons, drugs or danger to self or others, yes, that child should be pulled from the classroom. So we were supportive of the 45 days there, and you can always have a second 45-day period (SDF2).

This special interest group did not support giving unilateral authority of schools officials to remove students with disabilities for behaviors that were more open to subjective interpretation. The policy analyst for this group stated further, "We really got away from 'disruptive' because 'disruptive' means a lot of different things to a lot of different people. It can't just be the principal decides. So we really fought that language" (SDF2).

Perspectives of Key Actors

Key actors supported, under limited conditions, unilateral authority of school officials to remove from school settings students with disabilities who exhibit inappropriate behaviors. The director in the US Department of Education shared:

> The amount of discretion people have in moving kids around is, I think, the bigger issue ... We went forward with what I would call a modest proposal that provided more flexibility to school districts as it related to extreme incidences of misconduct in relationship to weapons and drugs. Essentially, to objectively verifiable events. You either have one or you don't (GUM2).

The staff member for a high-ranking Democrat in the Senate stated:

> With respect to the issue of unilateral authority of school officials, there was a notion that there are certain kinds of behavior that are very objective. If you bring a weapon in, you know it. If you bring drugs in you know it. That's very objective kinds of behavior. In other words, if you do it, you have a good sense that it actually happened ... We wanted a continuum to provide maximum flexibility to school officials in those kinds of situations (GSM4).

The staff member for a high-ranking Republican in the Senate indicated that providing unilateral authority to school officials under the conditions described above was one of their intentions as the discipline provisions were drafted. He said, "And that's some of what we tried to do ... So, we provided in the law these changes to enable these kids to be put out for 10 days and for 45 days" (GSM5).

The key actors did not support unilateral authority of school officials to remove from school settings students with disabilities who exhibited inappropriate behaviors that were open to subjective interpretation. The director with the US Department of Education stated, "We didn't go down that route of including things that could be in the mind of the beholder, like 'dangerous' " (GUM2). The staff member for a high-ranking Democrat in the Senate echoed this view. He stated:

> The more subjective the issues were, the more we were concerned about providing unilateral authority. You've got things like assaults or danger or whatever kinds of behaviors. Sometimes it's in the eyes of the beholder and sometimes it's real ... How do you figure out which of these kinds of behaviors require discipline, and which require more appropriate services by trained staff? (GSM4).

The staff member for a high-ranking Republican in the House shared the rationale for this thinking. He stated, "It goes to the underlying issue, and it's a fair issue, of the historic use of discipline measures as a means of removing problem children. And, not surprisingly, problem children meaning children with disabilities" (GHM3).

The staff member for a high-ranking Democrat in the Senate provided additional insight into the rational of key actors. He stated, "Sometimes, it's [inappropriate behavior] because the system failed to provide appropriate services by trained staff. Are you blaming the kid for the failure of the system?" (GSM4). The staff member for a high-ranking Republican in the Senate added, "There are behaviors which are not necessarily discipline problems but attention problems. They make kids hard to teach. Unfortunately, they can be used at times to try and keep kids from being included in school" (GSM5).

Summary of Perspectives

All special interest group key informants and all key actors agreed that school officials should have unilateral authority to remove from school settings students with disabilities exhibiting seriously inappropriate behaviors. Those behaviors were bringing weapons to school or bringing drugs to school. They agreed that school officials should be given the flexibility to remove from school settings students with disabilities who exhibit other types of dangerous behaviors.

The lobbyist for a special interest group representing general education administrators supported unilateral authority of school officials to remove from school settings students who exhibited seriously disruptive behavior or who committed assault. Neither the other key informants nor the key actors supported unilateral authority of school officials to remove students with disabilities exhibiting those behaviors or exhibiting other behaviors open to subjective interpretation.

Key actors expressed concern that school officials may unfairly remove students with disabilities from school for inappropriate behaviors open to subjective interpretation.

Prescribing the Specifics of the Discipline Provisions

Special Interest Groups' Perspectives

There was disagreement among special interest groups regarding the degree of prescription that would be needed in the 1997 IDEA discipline provisions developed by the key actors. The disagreements were well known among the special interest group representatives. The director for a special interest group representing general education administrators said, "There was a conflict in ideology about letting states handle [the specifics of] discipline of special education students" (SEF1). The policy analyst for a special interest group representing individuals with disabilities shared, "It became the general ed community versus the special ed community ... And we all knew it" (SDF2).

The special interest group representing special education administrators felt that the particulars of disciplining students with disabilities should be left to states. The director for this group recommended to members of Congress that, under the "State Plan" section of IDEA, states should be required to "set forth polices and procedures relating to the suspension and expulsion of children and youth with disabilities ..." (SI5-5). Parameters for the policies and procedures were suggested. The director for this special interest group further explained:

> Our particular take on these discipline amendments from the very beginning was that we felt that the federal law should say something in the eligibility section that states will develop policies and procedures regarding disciplining of children with

> disabilities. Leave it at that or put in a few basic parameters. And then have the states and localities develop discipline policies. We took the stand that 'states shall develop policies and procedures' around discipline, rather than to put the specifics into federal legislation (SDEF3).

The lobbyist for a special interest group representing general education administrators shared her group's differing perspective. She said:

> I personally and the organization believe there's a legitimate federal involvement. In that light, I would say there's an argument for being prescriptive from a federal level. ... These particular ones [discipline provisions] may be a little too prescriptive because there are too many hoops to jump through (SEF4).

Perspectives of Key Actors

Key actors held differing views on the degree to which the specifics of the discipline provisions should be included in federal legislation. Differences in views were along party lines. Democrats were more united in their views. The director for the US Department of Education stated, "We felt there needed to be explicit statutory language" (GUM2).

The staff member for a high-ranking Democrat in the Senate expanded upon this view and provided a rational. He shared:

> This [IDEA] was aid by the federal government to help schools meet their Constitutional responsibility to children. Doesn't it make sense to have a basic floor of opportunity described in federal legislation, so that the basic

> Constitutional responsibility is clearly understood by all the school systems in a state and in all school systems among states? (GSM4).

Republicans were less in agreement regarding the degree to which federal legislation should prescribe the specifics of discipline for students with disabilities. The staff member for a high-ranking Republican in the House stated:

> I will tell you that they [Republicans] were torn on that … We had a lot of internal policy debates about how, frankly, Republicans on our committee would be interested in just getting rid of this [discipline provisions] completely. But we'd already bought into the fact that this [discipline of students with disabilities] was going to be federal regulation. If you accept that fact, … then the next question is how to go about doing that (GHM3).

The staff member for a high-ranking Republican in the Senate shared a slightly different view. He stated:

> The most difficult part was finding the answers to the discipline questions … Trying to bring some clarity to them and unity to discipline procedures and opportunities that disabled kids would have … We had to have some very clear definitions of discipline and what it means. Shouldn't there be a standard? We thought so. And it would end up solving problems ahead of time by making it clear what the template was for how kids were to be treated and how discipline was to be treated. We thought it would be better to lay out a pattern (GSM5).

Summary of Perspectives

The degree to which the specifics of disciplinary procedures should be prescribed in federal legislation was a controversial policy issue. Controversies existed between and among special interest groups and key actors.

The special interest group representing general education administrators agreed that federal involvement was needed and, therefore, some degree of prescription was warranted. The special interest group representing special education administrators felt that developing specific disciplinary procedures and polices was best left to the states.

Of the key actors, Democrats provided evidence of cohesive support for detailed and prescriptive discipline provisions. Republican key actors indicated that their party was less united on the degree of prescription the discipline provisions should have.

Determining When Disciplinary Action Was Warranted

Special Interest Groups' Perspectives

General education administrators felt that the federal legislation should address conditions under which students with disabilities exhibiting inappropriate behaviors could be disciplined. Their perceptions were that students with disabilities who exhibited inappropriate behaviors could not be disciplined under the "old" (1990) IDEA. The lobbyist for a special interest group representing general education administrators stated, "At that time my members were screaming so loudly for some relief. They just felt their hands were tied by this law" (SEF4).

The director for a special interest group representing special education administrators acknowledged this perception. She stated, "It was expressed, that some of

these people [school administrators] felt they could not remove a student with disabilities" (SDEF3). However, she attributed this perception to practice that had evolved, not policy. She explained,

> But school districts have become so nervous about being sued that the whole culture kind of developed that you can't remove kids with disabilities. Their school district probably told them that if it's a kid with an IEP don't you touch them ... And I think that ... the disability community is as much to blame about that as the general ed community. We all bear some responsibility for the way the practice has evolved (SDEF3).

The policy analyst for a special interest group representing individuals with disabilities indicated that this perception of general education administrators may have been because, "the schools may not have been applying IDEA properly in the first place" (SDF2). The director for a special interest group representing special education administrators supported this view stating:

> It was expressed, that some of these people [school administrators] felt they could not remove a student with disabilities even though clearly there was nothing in the [previous] law preventing that. And certainly there were clear ways to do that under previous law (SDEF3).

The lobbyist for general education administrators countered this. She said, "They [administrators] know how to implement this law. A lot of the argument was, 'Your principals don't know how to implement the law.' But they've grown up with this law" (SEF4).

All special interest group key informants agreed that disciplinary action was warranted if students with disabilities brought weapons or drugs to school or if they exhibited dangerous behaviors. The policy analyst for a special interest group representing individuals with disabilities illustrated this perspective by saying, "On the serious offenses of weapons, drugs or danger to self or others, yes, that child should be pulled from the classroom" (SDF2).

The lobbyist for the special interest group representing general education administrators indicated that her members wanted disciplinary action to be warranted for other inappropriate behaviors. She stated:

> I think for a lot of my members, they want a violent child away from other children for as long as they can have them away ... "Seriously disruptive" is what we wanted in there. We wanted "assault" in there as well (SEF4).

Key informants representing two other special interest groups did not support warranting disciplinary action for those behaviors that were open to subjective interpretation. The policy analyst for a special interest group representing individuals with disabilities stated, "Disruptive means a lot of different things to a lot of different people ... You could have two principals look at one incident and see it clearly differently and handle it clearly differently" (SDF2).

These two key informants provided rationale for their similar perspectives. The director for a special interest group representing special education administrators indicated that some behaviors related to a child's disability could be misinterpreted as behavioral problems. She shared, "Children may exhibit some sort of behavioral problem

which may be a conduct problem, versus some child who has an emotional disability or a learning disability which causes them to act out" (SDEF3). The policy analyst for a special interest group representing individuals with disabilities echoed this view. She stated, "Kids that have seizures. Yes, that's disruptive, but that doesn't mean the child shouldn't have programs" (SDF2).

Key informants from these same two special interest groups were concerned that warranting disciplinary action in the 1997 discipline provisions for inappropriate behaviors open to subjective interpretation would allow school officials to use those subjective interpretations as a means to exclude students with disabilities from schools. The director for one special interest group said, "Parent advocates perceive that discipline is a mechanism to get their kids out of classes" (SDEF3). The policy analyst for the other special interest group shared:

> We got away from "disruptive" because that [taps with pencil] could be disruptive. That doesn't mean the child has to leave the classroom. ... What we were afraid of ... was that schools would just keep giving suspensions. And in fact, the kid would be out of the classroom for months at a time (SDF2).

Perspectives of Key Actors

When discussing development of the 1997 IDEA discipline provisions, key actors addressed implementation of law, types of behaviors to be included in the discipline provisions, and rationale for their perspectives. These views are consistent among all key actors.

Key actors did not perceive that the 1990 IDEA prevented school officials from removing students with disabilities who exhibited inappropriate behaviors. They felt that school officials did not always use opportunities provided to them in that law to handle appropriately discipline of students with disabilities. The director in the US Department of Education said, "I never felt that [the 1990] IDEA was an obstacle for running safe discipline in schools, if you exercised the remedies that existed in [the 1990] IDEA" (GUM2). The staff member for a high-ranking Republican in the Senate shared, "What we found was that there were an awful lot of school systems in various parts of the country who weren't living anywhere near by the law" (GSM5).

Key actors perceived that, under the 1990 IDEA, disciplining students with disabilities only became problematic for school officials if parents disputed the decision to remove the student from school or class and invoked "stay-put." Invoking "stay-put" meant that the child would have to remain in the educational setting until the dispute was resolved. Even at that, key actors perceived schools could still remove students from schools or class by properly implementing remedies that existed in the 1990 IDEA. The director in the US Department of education shared:

> "Stay-put" is the crux of this issue around discipline. You don't have a problem if the parent agrees with what you're doing. You only have a problem if a parent invokes "stay-put" ... There was always available under [the 1990] IDEA the ability to override a "stay-put" decision by a parent through a temporary restraining order (GUM2).

Key actors agreed that disciplinary action was warranted for "objectively verifiable events" (GUM2). The staff member for a high-ranking Democrat in the Senate illustrated the perspective of key actors stating:

> If you bring a weapon in, you know it. If you bring in a knife or a gun, you know it. If you bring drugs in, you know it. That's very objective kind of behavior. In other words, if you do it, you have a good sense that that actually happened (GSM4).

Key actors supported the removal of students with disabilities from school settings if they exhibited these types of behaviors. The director in the US Department of Education stated, "We went forward with what I would call a modest proposal that provided more flexibility to school districts as it related to extreme incidences of misconduct in relationship to weapons and drugs" (GUM2).

Key actors did not support including in the 1997 IDEA discipline provisions warranting removal of students with disabilities for behaviors that were open to subjective interpretation. A staff member for a high-ranking Republican in the House stated:

> We did not want to get into assault. An assault can be to do this [lunges] to somebody and actually make them afraid. Say a large boy did that to a small girl or some such situation. It could be interpreted as an assault and you could eject that child (GHM3).

The staff member for a high-ranking Republican in the Senate echoed this perspective saying, "Disruptive can be almost anything. Is it disruptive or isn't it? I suppose if a kid talked all day in every class all year long, that's clearly disruptive" (GSM5).

Key actors were concerned that some behaviors open to subjective interpretation and considered inappropriate by school officials may simply be behaviors related to the student's disability. If the behavior is related to the disability, the student, by law, cannot be disciplined. The staff member for a high-ranking Republican in the Senate shared, "More kids are being included [in public schools] with much more challenging behaviors ... There are some kids that just have more little quirks than other children may have. Maybe associated with ADHD or other chemical imbalances" (GSM5). The director in the US Department of Education stated, "You know, we had one person coming to talk about a kid who wasn't toilet trained. Well, you know there are kids who aren't toilet trained. And the law is clear that they have a right to an education" (GUM2).

Key actors were also concerned that some behaviors open to subjective interpretation and considered inappropriate by school officials may be behaviors exhibited by students with disabilities because of a "failure in the system" (GSM4). The staff member for a high-ranking Democrat in the Senate explained:

> Are you blaming the kid for the failure of the system? A kid with mental retardation who has been segregated is all of a sudden in a new social environment. All of a sudden they start hitting kids because they don't know any other behavior. How do you figure out which of these things require "discipline," which require a removal, and which require more appropriate services? (GSM4).

The director in the US Department of Education felt that students with disabilities who exhibit inappropriate behaviors might be a product of inappropriate placement or services. He stated:

> In some instances, and people brought up examples to us, and the kids had ridiculous IEPs. In a sense they didn't belong in this placement. They didn't have support services, they didn't have the things they needed to make a successful placement for the kid (GUM2).

The staff member for a high-ranking Republican in the Senate indicated that inappropriate behaviors exhibited by students with disabilities might be a result of poorly written Individualized Education Plans (IEPs). He said:

> One of things that we tried to focus on was that a good IEP will get you 90% down the road because you'll know what to expect. Some kids don't want anybody sitting right next to them. They just don't want it; they can't stand it. It's physically threatening to them. If the teacher knows that, then they just don't sit anyone right up next to them. If you don't know that and have all the kids sitting on a bench, then this kid is going to go crazy. Is it the kid's fault he went crazy? Not really. Is it the teacher's fault? Not really. Should we have figured this thing out beforehand? Yeah! If we do a good IEP, we'll figure out most of these things (GSM5).

This same key actor felt that students with disabilities may be perceived by school personnel to be exhibiting inappropriate behaviors because, "There's an awful lot of teachers right now teaching classes with disabled kids in them who really have no training in doing that" (GSM5). The director in the US Department of Education indicated that administrative error could put students with disabilities into the position of behaving inappropriately. He stated:

> The school that had been involved in getting the kid transferred never informed the school receiving the kid that this kid had very serious behaviors that had been exhibited in the previous school. Had that school been informed, this incident never would have occurred (GUM2).

Key actors perceived, unanimously, that school officials historically used disciplinary measures as a means to exclude students with disabilities from school. The staff member for a high-ranking Democrat in the Senate stated, "We had to look at the [discipline] issue in the historical context of exclusion, segregation, and denial of appropriate services to these children" (GSM4). The staff member for a high-ranking Republican in the House added, "It also goes to the underlying issue, and it's a fair issue, of the historic use of discipline measures as a means of removing problem children. And, not surprisingly, problem children meaning children with disabilities" (GHM3). The director in the US Department of Education echoed this by saying:

> Some of this stuff [in the discipline provisions] was really being driven from our perspective that the issue of discipline started to take on kind of a straw dog aspect to it. It was more an issue in some instances of "We really don't want these kids" (GUM2).

Sharing his views of parents of students with disabilities, the staff member for a high-ranking Republican in the Senate said:

> The psychological question the parents ask is whether or not they're [school officials] trying to get rid of the kid or not. Is he just too much trouble for them?

> Is it too expensive? Is it too hard, and they just don't want to deal with it? (GSM5).

Key actors believed that schools should provide students with disabilities opportunities to learn appropriate behaviors. The staff member for a high-ranking Republican in the Senate provided the rationale saying, "Part of what you have to teach is what the proper behavior is in a group. That's what the parents want him [the child] to know. They want him to be able to live in society" (GSM5). The staff member for a high-ranking Democrat in the Senate reinforced this view:

> Does it help to exclude that kid [exhibiting inappropriate behaviors] or to put him in a separate class with kids who are incorrigible? No! Because then they're going to learn *that* behavior. What you need to do is use the appropriate strategies. Shouldn't we try to assess the kid? Try to figure out what the problem is? And if we can, are there solutions in the literature based on an educational approach for having an intervention plan that is likely to result in a positive change, that will ensure or maximize the likelihood that the behavior does not reoccur? What was the message that the amendments would send?... Would the amendments say, "Do whatever you want. Exclude at a blink"? Or would the message be, "Try. Try again. And try harder. And if it doesn't work, then take action" (GSM4).

Summary of Perspectives

The key informant for the special interest group representing general education administrators was the only person who shared that her members believed that they could not discipline students with disabilities under the 1990 IDEA legislation. Other key informants and key actors believed the 1990 IDEA allowed for disciplining of students with disabilities who exhibited inappropriate behaviors.

All special interest group key informants and key actors agreed that disciplinary action should be warranted through the 1997 IDEA discipline provisions for students

with disabilities who brought weapons or drugs to school or who exhibited dangerous behaviors. Only the key informant for the special interest group representing general education administrators believed disciplinary action should be warranted through the 1997 IDEA discipline provisions for students with disabilities who exhibited seriously disruptive behavior or who committed assaults.

Key informants for two other special interest groups and key actors agreed that disciplinary actions should not be warranted through the 1997 IDEA discipline provisions for behaviors open to subjective interpretations, especially if the behaviors are exacerbated by the student's disability or by system errors.

Key actors were unanimous in their perception that historically school used discipline measures as a means of excluding students with disabilities from schools.

Creating a Dual System of Discipline

Special Interest Groups' Perspectives

Key informants perceived that the 1997 IDEA discipline provisions would allow students with disabilities to be disciplined less severely than would general education students who committed the same offenses. The director for a special interest group representing special education administrators said:

> There's a dual system rhetoric that's very obvious. I mean that school districts still perceive that there is a dual system of discipline. That while they have these mechanisms to get students out who have serious behaviors, they still feel that ... kids with disabilities have rights that nondisabled students do not (SDEF3).

She questioned, "We felt, why did they [Congress] want to impose these [due process protections] in federal law for students with disabilities when we didn't have them for general ed students in federal law?" (SDEF3).

The lobbyist for a special interest group representing general education administrators shared this view stating, "A frustrating thing throughout this process was the idea that kids with disabilities have more rights than other kids. In our view, children with disabilities deserve an education as much as everybody else. But not more" (SEF4). The policy analyst for a special interest group representing individuals with disabilities stated, "We firmly believe that the child, and I'm referring to any child, has a right to an education" (SEF2).

Perspectives of Key Actors

The key actors did not perceive that the 1997 IDEA discipline provisions would create the dual system of discipline that key informants had perceived. The staff member for a high-ranking Democrat in the Senate indicated that to have the same disciplinary measures in place for students with disabilities and their non-disabled peers would actually perpetuate a dual system of discipline. He explained:

> There are all kinds of claims of double standards, and all that kind of stuff. The way I respond to that is, implicit in double standard is the same response for all kids to a particular action by a kid. In other words, the same discipline for all children given a certain action. That's the notion of everybody treated the same. But if everybody is not the same, given their disability, shouldn't we individualize the discipline to achieve the purposes and functions of those rules? We believe that there is a single standard, but you're using different approaches to achieve the same overall functions and purposes of those standards (GSM4).

The staff member for a high-ranking Republican in the Senate likened the due process protections in the 1997 IDEA discipline provisions to the steps administrators usually take to resolve any discipline situation. He stated:

> But what does an administrator have to do before he can mete out the punishment? He has to find out who did what. How did this start? How did this happen? You have a problem in school and you investigate it. You just have one more stage added, which is, did this kid understand at all what he was doing? But it's not any different from figuring out what happened and why and who did what to whom. And you have to find that out to discipline the kids in any situation anyway (GSM5).

This same key actor pointed out that when there is no relationship between the inappropriate behavior of a student with a disability and the student's disability, the student should be treated as any other student would be. He said:

> It really comes around to how difficult it is for a school to keep a kid [with disabilities] out for a full year if that's what they want to do. And they can do it without an awful lot of trouble. But it's certainly more trouble than for a kid who doesn't have an IEP (GSM5).

When discussing the potential for a dual system of discipline being established by the 1997 IDEA discipline provisions, the staff member for a high-ranking Democrat in the Senate brought up an aspect of the discipline provisions which was the source of a great deal of controversy. He stated, "If it's [the inappropriate behavior] absolutely not related to the disability, the policy is that kid can be excluded, expelled, or suspended for

however many days just like a nondisabled kid, except there is no cessation of services" (GSM4).

Summary of Perspectives

Key informants for special interest groups perceived that the 1997 IDEA discipline provisions would promote a dual system of discipline providing more rights to students with disabilities than to their non-disabled peers. Their opposition to the discipline amendments in this regard was based on the fact that there was no comparable federal legislation protecting the rights of non-disabled students.

Key actors did not perceive that the 1997 IDEA discipline provisions would create a dual system of discipline.

Ceasing Educational and Related Services to Students with Disabilities Who Are Suspended or Expelled

Special Interest Groups' Perspectives

The most controversial policy issue was whether or not educational and related services should be ceased for students with disabilities who are suspended long-term or expelled from schools for reasons unrelated to their disabilities. The director for a special interest group representing special education administrators said, "Well the main thing that kept the discipline provisions from being finalized was, in my mind, the controversy over whether or not to provide educational services if the child was removed from school" (SDEF3).

Support for continuing educational services to students with disabilities who were suspended long-term or expelled varied among special interest groups. The policy

analyst for a special interest group representing individuals with disabilities shared that members of her group "do not support cessation of services for *any* child. We don't believe *any* child should be denied services for education" (SDF2). The lobbyist for a special interest group representing general education administrators added, "My group's feeling is everybody should get services continued" (SEF4).

The special interest group representing special education administrators was less clear in its support. The director for this group said, "The fact of the matter is, I'm not sure that all of *my* members would agree that each child who is expelled should receive services. So, our general position is that we support continuation of services. ... That's the consensus position" (SDEF3).

In 1996 during the 104th Congress, two of the key informants participated in closed-door negotiations with representatives of other special interest groups. Their goal was to draft IDEA legislation to present to members of Congress. These two key informants witnessed the extent of the controversies first hand. The lobbyist for a special interest group representing general education administrators talked about these negotiations. She stated, "We were pretty united with the exception of the issue of cessation of services, which my group does not support. We had to part company on that and we just agreed to disagree" (SEF4). The director for the special interest group representing special education administrators added:

> But in the final analysis on the discipline issue, we still were not able to come to consensus over provision of educational services. That was the one issue that still loomed out there. What finally happened was that we sent two versions of our

> final draft to the chairman of the house education committee, one which included continuing education services, and one which said that you could cease education services. We said, 'You know, we just can't agree on this issue' (SDEF3).

Key informants shared information that helped explain the controversy. The policy analyst for a special interest group representing individuals with disabilities stated:

> It became the general ed community versus the special ed community. We were saying, basically, special ed kids have it hard enough to learn. And if you start taking time away from them, the likelihood that they will come back to school after being expelled is very small. [Interest groups representing educators] are all basically saying, 'How are we going to pay for it? It's not our responsibility.' It became a money thing, I think, in a lot of ways (SDF2).

The director for a special interest group representing special education administrators shared her perspective saying:

> In some cases, like with the school boards or with the local superintendents, they may look at this and say, 'Well, we don't provide educational services for non-disabled students when they're expelled, so why should we perpetuate a dual standard and continue to provide services?' And I don't think it's any malice involved. For school boards and local superintendents ... also it's an issue of money. I mean it's not just a matter of saying, 'We're going to provide services.' Someone has to figure out the logistics, the staffing and the resources. ... And I think many times, some of the other members of the disability community really don't think in those terms at all (SDEF3).

The lobbyist for a special interest group representing general education administrators added:

> A frustrating thing throughout this controversy, was the idea that kids with disabilities have more rights than other kids. In our view, children with

> disabilities deserve an education as much as everybody else does. But not more. And my members are responsible for every child in the school. And so I would like to see a federal law that says *every* child is entitled to a free and appropriate public education (SEF4).

Perspectives of Key Actors

Key actors indicated that whether or not to cease educational services to students with disabilities who were suspended long-term or expelled was a policy issue dispute that arose during the 104th Congress. The staff member for a high-ranking Democrat in the Senate shared, "During the 104th Congress, in general, the most controversial discipline issue dealt with the cessation of services. That was number one. Some people wanted cessation, some people wanted unilateral discretion. Some people didn't want any cessation even for 10 days" (GSM4).

Differences in opinions regarding ceasing of services to students with disabilities was evident among key actors. A director in the US Department of Education said:

> The Department had interpreted [the 1990] IDEA to say FAPE [providing a free and appropriate public education] applied to every child, even if they were suspended or expelled from school. Our proposal did not have anything explicit in it as it related to cessation of services because we believed that was the law at the time (GUM2).

The House Bill drafted during the 104th Congress allowed for ceasing of services to students with disabilities who were suspended long-term or expelled. A staff member for a high-ranking Republican in the House stated:

> I took the position, after reading the case law, that case law to this point was flawed, and there was no guaranteed right of service ... We removed the guaranteed right of service ... to reverse case law that contradicted that (GHM3).

A staff member for a high-ranking Democrat in the Senate indicated that the people he represented supported the continuation of educational services to students with disabilities who were suspended long-term or expelled. He provided their rationale saying:

> One of the major provisions in IDEA back in 1975 was this concept of zero-reject. The school system had a responsibility to serve all children regardless of the nature or severity of disability. Here was this notion of continuing to provide services to all kids. The question became, if we said cessation of services for some, then you were, in effect, going smack head into the zero-reject policy. You were, in fact, diminishing that (GSM4).

Disagreements continued into the 105th Congress in 1997. The staff member for a high-ranking Republican in the Senate stated:

> It really was extremely important to the disabled community, the advocates, the parents, and a number of the Democratic representatives and their staff people that there would never be a cessation of services. Obviously. There were some who said there could be cases for cessation of services. There were differences throughout the group, and in some cases quite contentious views of what ought to be done (GSM5).

Controversies went deep into the branches of the government. A director in the US Department of Education shared, "It was controversial within the administration, I can tell you that" (GUM2). The staff member for a high-ranking Republican in the House shared. "It was the unanimous view of my members that the issue of ceasing services or not is a state or local matter" (GHM3).

Controversies among special interest groups were evident to the key actors. A staff member for a high-ranking Republican in the House shared, "There was a lot of lobbying on every side. People said, 'This is outrageous, this is terrible. We won't accept this' " (GHM3).

Summary of Perspectives

Key informants and key actors agreed that whether or not to cease educational services to students with disabilities who were suspended or expelled was a very controversial policy issue. There were differences in opinions regarding this issue between and among special interest group key informants and key actors. Democrats supported continuing services to students with disabilities who were suspended or expelled more strongly than did Republicans.

Procedures for Developing a "Balanced" Policy

Key actors needed to find a way to give proper consideration to the controversies surrounding the emergent policy issues. To assist them in developing a balanced policy for disciplining students with disabilities during the 105th Congress, the key actors employed a consensus process and used strategic posturing. To understand why the

consensus process and strategic posturing were used, the unsuccessful efforts of the 104th Congress to pass IDEA legislation are revisited.

Failure of the Efforts of the 104th Congress to Pass IDEA Legislation

Efforts to reauthorize IDEA during the 104th Congress were begun in the House, using the traditional congressional processes to enact legislation. The Subcommittee on Early Childhood, Youth and Families of the House Committee on Economic and Educational Opportunities initiated these efforts. The staff member for a high-ranking Republican in the House who served on the Committee shared:

> We, as the committee, had already released drafts. There were actually two separate ones. There was a second draft that was released in November of that year. And we put all of that[weapons, drugs, and battery]into the second draft and ran it up. And that was floated in early November of 1995. And then the screaming started (GHM3).

The same House Republican was at the center of efforts to have special interest groups provide input for the legislation. His staff member shared that certain special interest group lobbyists "... went out and organized these groups ... [The House Republican] got wind of it and told us to let them know that he wanted his Bill as the base of any recommendations" (GHM4). The Senate acknowledged these efforts. The staff member for a high-ranking Republican in the Senate shared:

> [The House Republican] had gotten together many of the outside groups, from the teachers' groups to the administrators' groups, to the parents groups, to those who

> work with parents and disabled individuals. He tried to get them together to write a Bill (GSM5).

Two special interest group key informants participated in those negotiations. The lobbyist for a special interest group representing general education administrators called this a "nightmare period of negotiations" (SEF4). The director for a special interest group representing special education administrators provided more detail. She explained:

> Well basically the chairman of the House Education Committee got the stakeholders together and asked us to hash out what we would like to see as legislation. So in essence we put together a draft bill. Now we were sequestered at the NEA building for a solid week doing this morning till night process, and it was very instructive (SDEF3).

While this informal committee agreed on many aspects of the discipline provisions, they could not agree on whether or not educational services should be ceased to students with disabilities who were suspended long-term or expelled. The lobbyist for a special interest group representing general education administrators indicated, "We had to part company on that [no ceasing of services] and we just agreed to disagree" (SEF4). The director for a special interest group representing special education administrators shared the committee's solution to the controversy. She said, "What finally happened was that we sent two versions of our final draft to the chairman[in the House], one which included continuing educational services and one which said that you could cease educational services" (SDEF3).

The House took note of the two versions and prepared a Bill that allowed cessation of educational services to students with disabilities who were suspended long-term or expelled (GL5-6). In spring of 1996, the House passed its Bill. Controversy continued, however. The staff member for a high-ranking Republican in the Senate explained:

> While they sent a Bill to the floor and passed the Bill on the House side that had overwhelming support, the disability community, disability advocates and the parents had really grave concerns about what was in the Bill and what would happen as a result of passing that Bill (GSM5).

The Senate began its work on a Bill after the House had begun its work. The staff member for a high-ranking Democrat in the Senate shared, "There was a Senate Bill that had discipline. The Senate reported a Bill out of committee that included the discipline provisions that were the result of this [special interest group] consensus-building process" (GSM4). The Senate was not able to come to consensus on a Bill. The same staff member said, "But almost immediately everybody involved was effectively walking away from the consensus" (GSM4). The staff member for a high-ranking Republican in the Senate stated:

> They tried to put together a Bill for mark up in July and early August [1996] and ran into problems with some of the Senators on the committee who felt the discipline issues were not being adequately addressed. The Senate did not act on a Bill and the reform Bill died in the 104th Congress. That's the way it ended in the 104th Congress (GSM5).

The Consensus Process

The 105th Congress began with renewed efforts to reauthorize IDEA. The House was adamant in its resolve to pass a Bill. The staff member for a high-ranking Republican in the House said, "We were going to move a Bill. And the starting point would be the Bill we passed last year" (GHM3).

Because of the controversies and lack of success in reauthorizing IDEA in the 104th Congress, it was suggested that a new consensus process be used. The consensus process would consist of two parts. A committee of Democrats and Republicans from the House, Senate and Administration would meet in closed-door negotiations to draft the legislation. Public hearings would be held on a regular basis where special interest groups and individuals would be briefed on progress and would be allowed to give testimony.

The staff member for a high-ranking Republican in the Senate initiated the process. He explained:

> At the beginning of the 105th Congress I went to the chairmen of the two authorizing committees and asked them if they would allow us to try a process which would include all of the different people who had an interest in this: the outside groups as well as representatives of the House members and senators and the Executive Branch. To sit down and work through an effort to write an IDEA Bill that would update the old law ... to try and make these decisions at the legislative level so it would be clear what was intended by the Congress (GSM5).

The staff member for a high-ranking Democrat in the Senate further explained the purpose:

> A suggestion was made to try to get the Administration, the Democrats and Republicans in the House and the Senate to sit down and see if they could try to take control over the legislation. Take control back in terms of the policy makers and their staff. And to figure out a way of doing it so that, in my opinion,

> everybody could walk away feeling comfortable with the policy and that the legislation would then be greased and make it through the process. By having the administration at the table, by having Democrats and Republicans, and having a facilitator (GSM4).

Those participating in closed-door negotiations were staff of House and Senate Democrats and Republicans, and members of the US Department of Education. All key actors interviewed for this study participated in these negotiations.

This group first decided upon the guiding principles and rules by which it would operate. They agreed to use current law, facts and research to guide them in developing the discipline provisions and other sections of IDEA. They made the decision to distinguish between problems with IDEA and problems with implementing IDEA (GI5-10). The staff member for a high-ranking Democrat in the Senate explained, "We insisted that before we got into the specific issues, that we would reach consensus on certain guiding principles. What were our joint goals, objectives and concerns with respect to the reauthorization?" (GSM4).

They then established procedures by which they would operate. This same key actor continued:

> We also spent time talking about process and procedural approaches. What if we reached consensus, what then? The notion was, if we reached an agreement, no amendments would be accepted unless everybody agreed to them. We agreed that we weren't going to make changes based on those comments [from public hearings or from members of Congress or Administration] unless everybody felt comfortable with them. Part of the other process was that we would go to our

members and get sign-off. Once it went to the members, that was it. We went on to the next issue (GSM4).

After agreeing to guiding principles and procedures, those in the negotiations drafted the various sections of IDEA. The staff member for a high-ranking Republican in the House shared, "What mattered was that over the course of four or five weeks of reasonably intensive all-day every week staff negotiations that usually ran from late morning or early afternoon to seven or eight at night. That's where things happened" (GHM3).

Weekly public hearings were held. The staff member for a high-ranking Republican in the Senate explained the purpose of the hearings:

> We would bring those ideas to regular weekly meetings that we held for all the people who had an interest in the legislation. All the outside groups could send people if they wanted to. Individual parents could come if they wanted. Those meetings were very much like open hearings. We provided for them a grid saying here's what we're working on, here are some of the tentative decisions we've made. We tried to walk through what we were doing at the staff level so that they weren't surprised by the progress that we made. In addition to which it was sort of a rolling situation. We talked to them about what we had done. They'd advise us on what we had done. We talked to them about what we were going to next and get their advice on that (GSM5).

Key actors discussed comments from the public hearings as part of the closed-door negotiations.

The consensus process continued from February 1997 until May 1997. The 1997 IDEA was signed into law in June of 1997.

Strategic Posturing

The key actors, as part of the consensus process, were able to draft a Bill by using a rational decision-making process that can be described as strategic posturing. Strategic

posturing involved making very deliberate decisions about timing, about whom they would involve in the decision-making process, and about negotiation and compromise.

Timing

The 105th Congress was anxious to have a Bill passed and made doing so a priority. When the suggestion was made to use the consensus process, the chairman for the House committee responsible for drafting a Bill established a timeline. The staff member for this high-ranking Republican in the House said:

> [The chairman] made one thing very very clear: we [the House] would move a Bill. Consensus would happen in a month, or it would not happen at all. And he was also clear that he was maybe willing to let things slip a little beyond that (GHM3).

The key actor responsible for developing and facilitating the consensus process responded:

> I told them we would try to come up with a proposal for the two chairmen by the Easter recess, so that we wouldn't hold them up ... They had to act [on a Bill]. We didn't want to take so much time that they wouldn't have time to move forward if they saw fit to do so if we failed (GSM5).

Timing of discussion of the policy issues was also critical. A deliberate decision was made to discuss the discipline provisions at the end of the timeline. The key actor responsible for developing and facilitating the process shared:

> We really started with the easy issues first. My theory was that if you could reach conclusions on the easy issues, people became vested in the idea of putting

> together a Bill because you would have built up that support. Whereas if you started with the more difficult [discipline] issues, it might have fallen apart before you began (GSM5).

Deciding Whom to Involve in the Decision-Making Process

The primary decision to make was who should serve on the consensus committee that would be responsible for drafting, behind closed-doors, the 1997 IDEA. All key actors interviewed in this study served on this committee.

The key actor responsible for developing and facilitating the process described those who were on this committee. He said:

> We put together staff people up here on the Hill. The administration had ... by and large left this to the Education Department staff. We had Republicans and Democrats from the House side as well as Republicans and Democrats from the Senate side (GSM5).

The key actor who was staff for a high-ranking Democrat in the Senate added:

> It was a helpful component to have administration at the table with their expertise, their knowledge of the research. And having Democrats and Republicans, and having a facilitator. Also having people who would do drafting, who understood the history of how the law developed over time, et cetera. From a Democratic point of view, this was our best strategy for having issues resolved on the merits rather than based on politics (GSM4).

The choice of the facilitator was also carefully planned. The key actor who was staff for a high-ranking Democrat in the Senate said:

> Now, choosing a facilitator who was a Republican, who was a staff director for the [high-ranking Senator] was an interesting notion. Because here is a person who is clearly Republican, who is working for a very conservative member of Congress, but who is in a leadership position, and who has a child with a disability. Given that we kind of failed in the 104th Congress to get beyond the hyperbole, Democrats said this is worth the risk (GSM4).

The decision was made to include in the process at some level special interest groups and concerned individuals. Scheduling public hearings on a regular basis during the consensus process accomplished this. The key actor who was a director in the US Department of Education said, "To his [staff member] eternal credit … he set up these public meetings where anyone could come and speak to those of us who were working on the Bill" (GUM2). The key actor who was staff for a high-ranking Republican in the House shared:

> I also think it was [staff member's] idea to do public hearings as part of it. He had been lobbied by various disability folks who were worried that this would look like a complete inside job and a fait accompli. And to avoid that, to keep it from looking like that, we would hold these [public hearings] (GHM3).

Decisions were also made to not involve certain members of Congress in debates about policy issues. When describing the debate over a contentious section of the 1997 IDEA discipline provisions, a staff member for a high-ranking Republican in the House said:

> And it was clear in our minds that the member who was most concerned about this, ... would get [the senator] tied into it. And we thought if we don't point this out to [the senator], and because we work for House Republicans, our members will be happy. So, we didn't bring it up (GHM3).

Negotiation and Compromise

Each member of the consensus committee agreed that not every person on the committee was able to have everything in the 1997 IDEA discipline provisions that he or she wanted. The director in the US Department of Education said, "It was a compromising law. No question about that" (GUM2). The staff member for a high-ranking Republican in the House added, "The easiest [issues] to resolve were everything the Department [of Education] had already proposed" (GHM3). This same key actor explained the consensus negotiations saying:

> We went through every section of the law, from section 601 straight through. And every day we would restart at section 601 and negotiate straight through. If issues needed to be resolved, your job was to tag them, go back, and try to resolve them among yourselves at night. Eventually things would become settled. That's how it really worked (GHM3).

It was understood that the discipline provisions would be the most contentious sections to deal with. The staff member for a high-ranking Democrat in the Senate explained how negotiating the controversies was eased:

> Before we did discipline, which was the last issue we dealt with, we said, "Before anybody has any proposals, before anybody puts words down, what are your

> interests, what are your concerns? Let's lay them all out and see if we might even reach an agreement that we have a mutual set of interest and concerns before we actually get into a discussion of the details" (GSM4).

The key point of controversy and, therefore, negotiation was the policy issue of whether or not to cease services to students with disabilities who had been suspended long-term or expelled from school. The staff member for a high-ranking Republican in the Senate explained the negotiation saying:

> And that *really* was an old-fashioned barter at the legislative stage. Saying, "OK, we won't cease services, but by the same token we have to have some very clear definitions of discipline and what it means" ... Clearly defining what we meant in the discipline provisions, laying them out was a fair trade for saying no cessation of services (GSM5).

The staff member for a high ranking-Republican in the House provided additional rationale for the compromise saying:

> It had become clear to us, the House Republicans, that we ultimately could not win and get a Bill passed if we retained cessation [of educational services]. It would be a filibuster. It was clear in our minds that even though we still thought we could carry all the Republicans we did not think we could break the Democrats on the issue of cessation ... We knew that was of central importance ... to a lot of the outside groups pressuring the Democrats. We knew if we gave on that, it was so large symbolically that it would mean a lot and it might break open the negotiations. And at the end of the day, it did (GHM3).

Summary of Procedures

Attempts to pass IDEA legislation in the 104th Congress failed, in part, because of Congress's inability to agree on the proposed discipline provisions. While a bill passed in the House, the Senate Bill did not come to a floor vote.

Determined to pass a Bill in the 105th Congress, key actors set up procedures for developing a federal policy regarding discipline of students with disabilities. The procedures consisted of the consensus process and strategic posturing. The consensus process included regularly scheduled public hearings and closed-door negotiations among Democrat and Republican members of the House, Senate, and Administration. Strategic posturing included establishing timelines for negotiations, determining who would be involved in drafting the Bill, and negotiation and compromise.

Factors Influencing the "Balance"

Key actors gave consideration to factors that had the potential to influence them as they sought to develop a balanced federal policy regarding discipline of students with disabilities. These potentially influential factors were: other federal legislation; case law; views of federalism; lack of data to support perspectives; stories told by special interest group representatives; and emotions of special interest group representatives and key actors.

Other Federal Legislation

Special Interest Groups' Perspectives

Two key informants representing the special interest groups did not mention other legislation as an influential factor in the development of the 1997 IDEA discipline provisions. The lobbyist for a special interest group representing educators mentioned that the Elementary and Secondary Education Act may have been influential (SEF4).

Perspectives of Key Actors

In developing the IDEA discipline provisions, key actors considered the history of federal legislation regarding educating students with disabilities. The staff member for a high-ranking Republican in the House stated, "I read the entire Congressional Record from the original introduction of the Bills until its passage in every subsequent amendment" (GHM3).

The staff member for a high-ranking Democrat in the Senate explained the importance of considering the history of educating students with disabilities. He said, "Prior to the enactment of IDEA nearly one million children were totally excluded from education. Totally excluded" (GSM4). His view was shared by the director in the US Department of Education. He stated:

> IDEA has as its foundation, strong Civil Rights foundation. [Acts] which preceded it sought to provide kids with disabilities their rights under the Fourteenth Amendment of the Constitution. That [rights of students with disabilities] was well documented to have been very significantly abused by state and local discretion. So, that has been the basis for IDEA and continues to be the basis for IDEA (GUM2).

One key actor mentioned several pieces of federal legislation that were given consideration as IDEA was being reauthorized in 1996 and 1997. Speaking about reauthorization of IDEA in general, the director in the US Department of Education stated, "We wanted to address some of the issues as it related to things around ... Goals

2000 and IASA, Improving America's Schools Act, so we'd have consistent policies between the Acts" (GUM2).

The Gun Free Schools Act of 1994 required that schools develop policies for immediate removal from school of students who bring guns to school or to school functions (GL4-2). Key actors gave consideration to the Gun Free Schools Act of 1994 when developing the 1997 IDEA discipline provisions. The director in the US Department of Education said:

> From the broad perspective of public policy there was a piece of legislation going through Congress when we first came here. The Gun Free Schools Act was directly dealing with the issue of discipline in schools. So there was a federalization to some extent on this issue, as it related to all kids, really (GUM2).

The Jeffords' Amendment to IDEA in 1994 allowed the same immediate removal options to be extended to students with disabilities. The Jeffords' Amendment stated that students with disabilities bringing guns to school or to school functions could be removed to an alternative educational setting for up to 45 days (GL5-8).

Key actors gave consideration to the Jeffords' Amendment as they developed the 1997 IDEA discipline provisions. The staff member for a high-ranking Republican in the House explained, "The Jeffords' Amendment would become erased from law the day any IDEA amendments passed, by its own terms. That's why we had to do something" (GHM3). The director in the US Department of education said, "When we approached the reauthorization of IDEA … we agreed of course with what Congress had already passed, which was that school districts had to have greater discretion in removing kids

who brought weapons or guns to school" (GUM2). The staff member for a high-ranking Republican in the House shared, "I was essentially to take the Jeffords' Amendment on firearms and expand that to include other weapons" (GHM3).

Summary of Perspectives

Key actors gave consideration to other federal legislation when developing the 1997 IDEA discipline provisions. The Gun Free Schools Act (1994) and the Jeffords' Amendment (1994) were given the most consideration.

Case Law

Special Interest Groups' Perspectives

Two key informants indicated that case law might have influenced key actors developing the 1997 IDEA discipline provisions. The director for a special interest group representing special education administrators said, "Ten days [suspension] arose from Honig. That just got codified, finally" (SDEF3). The lobbyist for a group representing general education administrators indicated that the degree of prescription of the 1997 IDEA discipline amendments may have been intended to decrease conflicting case law among circuit courts. She said, "It shouldn't be the luck of the geographic draw that kids get certain rights and not others" (SEF4).

Perspectives of Key Actors

Key actors gave consideration to case law when developing the 1997 IDEA discipline provisions. The staff member for a high-ranking Republican in the House said, "I sat down and went through every single letter of the law. I read a hundred cases, not all discipline" (GHM3). The staff member for a high-ranking Democrat in the Senate

said, "some of the standards that were ultimately included in the legislation clearly come from case law" (GSM4). The key actors first determined which case law to codify, which case law, if any, to overturn; and they identified ways to limit issues for future potential litigation.

Honig v. Doe (1988) was one case given consideration by key actors. Honig v. Doe (1988) established that students with disabilities exhibiting inappropriate behaviors could be suspended for up to 10 days without it being considered a change in placement; that students were to remain in current educational placements if disputes arose over placement (called "stay-put"); and that judicial processes could be used as emergency measures to remove from school settings students exhibiting inappropriate behaviors (GL 5-9).

> The staff member for a high-ranking Republican in the Senate shared:
>
> I listened to more discussions of Honig by the lawyers in the room about what it meant and how to do it. It was less a difficult decision to agree that we should put Honig in than it was to figure out *how* to put it in (GSM5).

The staff member for a high-ranking Republican in the House explained further saying:

> Of all, Honig had the greatest impact because the attempt was to codify Honig. Everything we got into was attempting to codify the Honig standard of 10 days [as a limit for removal of students with disabilities for inappropriate behaviors] (GHM3).

The "stay-put" provision of Honig (1988) was a basis of consideration for another section of the 1997 IDEA discipline provisions. The director in the US Department of

Education said, "When we approached the reauthorization of IDEA ... we agreed that school districts had to have greater discretion in removing kids who brought weapons or guns to school, even if the parent invokes 'stay-put' " (GUM2).

Key actors gave consideration to making more flexible the judicial hearing provision of Honig (1988). The staff member for a high-ranking Republican in the House explained that in the 1997 IDEA discipline provisions, "The entire provision on the hearing officer was an attempt to take the Honig judicial hearing and turn it into a hearing officer" (GHM3).

The key actors gave consideration to Commonwealth of Virginia Department of Education v. Riley (1997) when drafting the 1997 IDEA discipline provisions. In Riley (1997) the Fourth Circuit ruled that Virginia could cease providing educational services to students with disabilities who were expelled for inappropriate behaviors unrelated to their disabilities; and that the US Department of Education could not withhold IDEA funds from Virginia for doing so. The director in the US Department of Education said:

> There was an intervening event that I think highlighted the [discipline] issue. which was our decision and the Department's decision to seek to withhold funds from the state of Virginia for failure to serve kids who had been expelled from school (GUM2).

Key actors were not in agreement in determining whether the discipline provisions should uphold the ruling in Riley (1997) or nullify it. The staff member for a high-ranking Republican in the House said, "I took the position, after reading the case law, that case law up to Riley was flawed. There was no guaranteed right of service. I am

still firmly convinced that that was the correct interpretation of the law" (GHM3). The director in the US Department of Education countered this perspective saying, "The Department [of Education] had interpreted [the 1990] IDEA to say that the notion of continuing services to kids who had been expelled from school applied to all ...We believed that was the law" (GUM2).

Several lower courts were struggling with the issue of whether or not to cease services to students with disabilities who were suspended long-term or expelled from school. There were conflicting case law rulings on the issue at the federal level. The key actors in effect overturned the decision in Riley (1997) in the 1997 IDEA discipline provisions, by requiring that schools continue educational services to students with disabilities who are suspended long-term or expelled from school. The staff member for a high-ranking Republican in the Senate explained the rationale saying:

> It seemed to me that the worst thing in the world was to leave this to the tender mercies of lawyers and judges ... particularly when you had differing opinions at the circuit court level saying whether you could or couldn't have ceasing of services (GSM5).

The director in the US Department of Education added:

> There were a significant number of lower court cases dealing with this issue ... Clearly, if the Virginia case went to the Supreme Court and the Supreme Court agreed with the Circuit Court, then our policy would be moot. We felt that this issue was up in the air. And we felt the best way to deal with something up in the

> air from a policy perspective, was through a statute. Take care of it. So we took care of it (GUM2).

The key actors then made the decision to develop proactive legislation that would remove from courts issues of future potential litigation. They did this by being prescriptive when developing the 1997 IDEA discipline provisions. The staff member for a high-ranking Republican in the Senate shared:

> The courts were already starting to make decisions around these [discipline] issues. And there were more and more challenges in the courts. If there's a worse decision than the federal government making decisions about these discipline issues, it was *not* making the decisions and letting judges and lawyers make the decisions. That made no sense to me whatsoever (GSM5).

The staff member for a high-ranking Democrat in the Senate added:

> Shouldn't the standards be similar rather than have 50 courts with 50 sets of minimum Constitutional standards resulting in cases going crazy, different circuits having different decisions? You can see that you could have 100 different court cases going in 100 different ways, going to the courts of appeals, going to the Supreme Court, trying to resolving all these issues (GSM4).

Summary of Perspectives

Key actors made decisions to uphold case law, to overturn case law, and to proactively develop discipline provisions that would decrease issues for potential future litigation. Key actors gave consideration primarily to Honig v. Doe (1988) and Commonwealth of Virginia Department of Education v. Riley (1997).

Views of Federalism

The Tenth Amendment of the US Constitution gives states the authority over and responsibility for education of its citizens. Special interest group key informants held differing views about the appropriate degree of federal involvement in the discipline of students with disabilities. Key actors disagreed whether being prescriptive and increasing the number of mandates in the 1997 IDEA discipline provisions would be in conflict with the Tenth Amendment of the US Constitution. Disagreements occurred along party lines.

Special Interest Groups' Perspectives

Special interest group key informants each made the views of their members known to key actors. The views of the special interest groups differed from one another at least.

The lobbyist for a special interest group representing general education administrators shared the view of her members stating, "I think it's perfectly legitimate for the federal government to say all kids with disabilities should be treated thus and so. They have certain rights. This law [originally] came about because states weren't doing it uniformly" (SEF4). The policy analyst for a special interest group representing individuals with disabilities shared a similar view stating, "We firmly believe that any child has a right to an education. It's a Civil Right. And that's the funny thing about special education. I look at it like Civil Rights legislation" (SEF2).

The director for a special interest group representing special education educators shared a different view than the other two key informants. She stated, "The discipline policies generally are within the purview mainly of local school districts with guidelines

from the state agency. We felt very strongly that there was really not a place in the federal law for this" (SDEF3).

Perspectives of Key Actors

Key actors who were Democrats did not perceive that there was a conflict between states' authority and responsibility for educating its citizens and the 1997 IDEA discipline provisions. The staff member for a high-ranking Democrat in the Senate shared, "I don't think it exceeds notions in terms of federalism" (GSM4). The director in the US Department of Education said, "IDEA is very prescriptive. The question is, is it justified, is it a violation of the Constitution? The answer to that question is, I do not see this at all as a violation of a Constitutional right" (GUM2).

The Democrats framed their perspectives by addressing the 1997 IDEA as a voluntary grant program and as having a Civil Rights foundation. The director in the US Department of Education stated, "First and foremost, IDEA is a grant program. States do not have to participate. They don't have to take the money" (GUM2). The staff member for a high-ranking Democrat in the Senate expanded upon this by saying:

> First of all it's very important to understand what IDEA is from a conceptual point of view in terms of what kind of Bill it is. Clearly it's a grant in aid program that provides assistance to states to help pay for part of the cost of educating children with disabilities. But IDEA is more than just a grant in aid program. It is also a Civil Rights statute. It implements the Equal Protection Clause of the Fourteenth Amendment of the US Constitution (GSM4).

In a culminating statement, the director in the US Department of Education said:

> There is that tension, is this federalism run amok? My view has never been that ... I would never ever, ever want to go back to those days when locals and states had broad discretion over whether or not to even educate kids with disabilities (GUM2).

There was less consensus among Republicans regarding the federalism issue. The staff member for a high-ranking Republican in the House stated:

> I will tell you among my members that there were a lot of different views. We had a lot of internal policy debates about how, frankly, Republicans on our committee would be interested in just getting rid of all this [discipline provisions] completely. It was viewed by a number of Republicans as simply not being an appropriate federal role to micro-manage the expulsion policies of schools (GHM3).

The staff member for a high-ranking Republican in the Senate shared "[The Senator] felt very strongly there should be a very limited federal government role. Within those limits, we ought to be clear, we ought to have as few mandates as possible" (GSM5).

Even so, the Republicans rationalized the prescriptive nature of the 1997 IDEA discipline provisions by viewing IDEA as Civil Rights legislation. The staff member for a high-ranking Republican in the House said:

> If you accept Fourteenth Amendment jurisprudence saying that if a State is offering a service, for example education services, it may not discriminate in the provision of that service, and if you extend that further to all the Civil Rights

> legislation and Civil Rights jurisprudence, if you extend that to children with disabilities -- I think that is all legitimate (GHM3).

The staff member for a high-ranking Republican in the Senate agreed, saying:

> You looked at it as a Civil Rights question. Once you've crossed that threshold of whether or not you're going to have federal protections for the right to an education for these kids, it seems to me, as little as I like federal regulations and mandates, it's far better to have that decision made on the commonalty throughout the states rather than throw it up to whoever has the money to fight it out in court (GSM5).

He finished by saying:

> And this is a law that was put into effect because there were a lot of states, or places rather, in which kids weren't being educated. If the purpose was to have a law that said these kids ought to have the opportunity to be educated, then by its very nature that's federal (GSM5).

Summary of Perspectives

Two special interest group key informants supported federal involvement in developing policy regarding discipline of students with disabilities. The key informant representing special education administrators did not support such federal involvement. All key informants made their views known to key actors.

Democrats were united in agreeing that the 1997 IDEA discipline provisions did not impede states' responsibilities for providing an education to its citizens under the Tenth Amendment of the US Constitution. Republicans were less united, perceiving that

the federal government should not unnecessarily involve itself in states' responsibilities for providing education to their citizens.

All key actors viewed IDEA as Civil Rights legislation. Democrats and Republicans agreed that schools should not be able to exclude students with disabilities from receiving an education, as it was perceived they had done in the past.

Democrats also noted that IDEA was a voluntary grant program. It was their view that as such, it could be prescriptive in nature.

Lack of Data

The key actors intended to use data to guide them as the developed the 1997 IDEA discipline provisions. Little data were available.

Special Interest Groups' Perspectives

Key informants all agreed that no data were available to support the positions taken and shared with key informants. The director for a special interest group representing general education administrators shared. "Congress could not get a fair picture. There were no hard data on levels of satisfaction of current law or current practice" (SEF1). The lobbyist for a special interest group representing general education administrator said, "It was hard to lobby for a particular issue because there weren't scientific data to support either side" (SEF4).

Perspectives of Key Actors

When developing the guidelines for the consensus process, key actors wanted to ensure that policy decisions would be "... decisions based on facts ... rather than front-page hyperbole" (GSM4). Little data were available to help them do so.

According to two key actors, historical data were available that were given consideration when developing the 1997 IDEA discipline provisions. The staff member for a high-ranking Democrat in the Senate said, "Prior to the enactment of IDEA, nearly one million children were totally excluded from education. Totally excluded" (GSM4). The director in the US Department of Education said, "But the data that *was* there [prior to 1975 special education legislation], … was that when school districts were given broad discretion around serving kids with disabilities, they chose not to serve lots of them" (GUM2).

Little data specific to discipline were available to guide key actors in the development of the 1997 IDEA discipline provisions. The director in the US Department of Education said:

> We couldn't get data that people [school officials] were employing the remedies that were available to them and finding them wanting. We couldn't get the data … On the issue of "stay-put," we could not get data that there was large-spread abuse of "stay-put" [by parents]. It didn't exist. It still doesn't exist. The people who had a deep interest in amending the law on this issue could never produce it (GUM2).

Considering formal research and its findings, the staff member for a high-ranking Democrat in the Senate shared, "Once a kid with disabilities is disconnected from the system, they don't get reconnected to the system. So in the likelihood of a suspension or an expulsion, that kid would likely not be back in the system" (GSM4).

Summary of Perspectives

Two key actors spoke to the consideration given to data in developing the 1997 IDEA discipline provisions. They used historical data available. There were little data related to discipline useful to them in developing the 1997 IDEA discipline provisions.

Stories

Special interest groups and individuals shared stories with key actors involved in developing the 1997 IDEA discipline provisions. In 1997, the stories were shared at the public hearings scheduled as part of the consensus process.

Special Interest Groups' Perspectives

Key informants perceived that stories influenced key actors involved in developing the 1997 IDEA discipline provisions. The lobbyist for a special interest group representing general education administrators shared, "There was no data, and the anecdotes became true" (SEF4). The director for a special interest group representing special education administrators said:

> So much anecdotal information was floating around, that it was very hard to sift out what the real issues were, what the real facts were. And so it was almost like the battle of the dueling anecdotes. I mean, whoever could tell the worst horror story was the kingpin for that week in that discussion (SDEF3).

The lobbyist for a special interest group representing general education administrators did not feel that key actors listened to their stories. She explained, "There were the 'horror stories.' On the disability side, it was taken as gospel. Our anecdotes were just as real and not taken as seriously" (SEF4).

Perspectives of Key Actors

Despite the lack of data, key actors still were committed to develop discipline provisions that recognized legitimate concerns and addressed them. The staff member for a high-ranking Democrat in the Senate said, "Our concern was to be sure that you made decisions based on facts. Get away from the hysteria, get away from the hyperbole" (GSM4).

Key actors gave consideration to stories shared at public hearings. The director in the US Department of Education shared, "The working group took those comments very seriously that people brought to us" (GUM2).

The public hearings were "... certainly dominated by the comments made and the public discussions by the parents and the advocates [of students with disabilities]." (GSM5). The director in the US Department of Education said:

> The great majority of people who came to these meetings were parents of kids with disabilities. They were basically pleading with us, "Don't weaken the federal law. Make it stronger." And we heard too many horror stories from parents of kids who were kicked out of school. ... Quite a few kids came to testify. Kids with incredible stories. And some of them had had behavior problems in school that had there not been some of these provisions, they would not have been able to get where they are today. (GUM2).

He explained further the impact of these stories sharing, "They sound emotional, and they sound mushy, but they impact policy, believe me" (GUM2).

Educators also attended the public hearings, but they didn't share many stories. The staff member for a high-ranking Republican in the Senate said, "Many of the school people who came would come every week, take notes, listen, but wouldn't necessarily talk" (GSM5). The director in the US Department of Education shared his perspective of the educators' stories. He said:

> But the school people were not nearly as impressive as the parents and kids … In some instances, people [representing schools] brought up examples to us … and in those anecdotes there were serious, serious problems with the decision-making on the part of the district … the kids had ridiculous IEPs [Individualized Education Plans] (GUM2).

He shared further:

> We had another [educator] who came talking about a kindergartner who was engaged in some really significant sexual acting out behavior. … She [the educator] should have been doing something far more significant than trying to get this kid out of school! That didn't impress people, you know? That doesn't impress people (GUM2).

He explained the consideration key actors gave to these stories by saying:

> It had a big impact on the results. And I don't think the over all impression given was, to be honest with you, that we wanted to give them [school officials] a lot more discretion in removing kids (GUM2).

The staff member for a high-ranking Democrat in the Senate agreed that the stories had an impact on the development of the 1997 IDEA discipline provisions. He shared, "There was a degree of legislating by anecdote, rather than based on the merits" (GSM4).

Summary of Perspectives

Key informants representing special interest groups shared stories with key informants. Key informants felt that the stories were very influential in the development of the 1997 IDEA discipline provisions because of the lack of hard data.

Key actors gave consideration to stories in developing the 1997 IDEA discipline provisions. The concerns of those representing students with disabilities were more likely to be addressed in the discipline provisions than were the concerns expressed by those representing educators.

Emotions

Key informants and key actors talked very emotionally about the development of the 1997 IDEA discipline provisions. They talked about their own emotions as well as the emotional climate present during the development of the discipline provisions.

Special Interest Groups' Perspectives

Key informants perceived that a highly emotional climate surrounded the development of the 1997 IDEA discipline provisions. The director for a special interest group representing special education administrators stated, "There was much recognition that when disability legislation is being discussed, what emotional issues you're dealing with. When emotional levels are high, taking a rational approach doesn't work"

(SDEF3). The lobbyist for a special interest group representing general education administrators added, "It's so controversial, emotions are *so* high" (SEF4).

The controversies in policy positions among special interest groups added to the emotional climate. The director of a special interest group representing special education administrators said, "I mean, some people [representing certain groups] really took all of this *very* personally, and really had quite strong feelings against some of the lobbyists and organizations, in a very personal way" (SDEF3). The policy analyst for a special interest group representing individuals with disabilities said, "Their defenses went up" (SDF2). The lobbyist for a special interest group representing general education administrators added, "I didn't like the way they [certain lobbyists] insulted my members. And some of the attacks were just personal. That's the frustration of dealing with [certain] lobbyists" (SEF4).

Key informants perceived that emotions influenced the development of the 1997 IDEA discipline provisions. The director of a special interest group representing general education administrators summarized this. She said, "Because there were no data, policy was set by emotions and anecdotes rather than by rational thought" (SEF1).

Perspectives of Key Actors

Key actors acknowledged the emotional climate surrounding the development of the 1997 IDEA discipline provisions. The staff member for a high-ranking Republican in the Senate said:

> The disability community was always very nervous about amending IDEA because they were worried about what effect it would have. In addition to which,

> there had been growing concern over discipline issues involving IDEA students. The increase in parents' concern about safety of their kids in school was going to be, because of what was happening in some of the schools, an issue that was going to overtake IDEA, if IDEA didn't try to get out in front of it GSM5).

The staff member for a high-ranking Democrat in the Senate described the impact of the emotions upon those drafting the discipline provisions. He said:

> There was a notion that all hell was still breaking loose and the ability to reach a consensus on a Bill was rapidly deteriorating. Given the emotional nature of the debate, especially with respect to discipline, the question was how to figure out a way to truly focus on the merits of the issue (GSM4).

Emotions were evident in consensus negotiations among those key actors drafting the 1997 discipline provisions. The staff member for a high-ranking Republican in the Senate shared, "Everybody was waiting for the shoe to drop when you got to the big issues on discipline" (GSM5). Regarding a point of controversy in the negotiations, the staff member for a high-ranking Republican in the House described:

> That is the only point where it ever degenerated into a very ugly screaming match between staff. It was really nasty. And in fact, we made threats saying, "This is it. We are not changing anything. We'll bury the Bill first..." It was ultimately resolved. And now in hindsight I can't even remember what it was. I can only remember how angry I was (GHM3).

Summary of Perspectives

Key informants and key actors agreed that emotions were influential in the development of the 1997 IDEA discipline provisions. The emotional nature of the policy issues controversies and their own emotions added to the emotional climate.

Results of Efforts to Develop a Balanced Policy

When developing the 1997 IDEA discipline provisions, key actors used the consensus process and strategic posturing to balance the conflicting views of seven policy issues and six influential factors. They were successful in their efforts to pass IDEA legislation in the 105th Congress, and IDEA was signed into law in June of 1997. Two sections were added that specifically address the discipline provisions developed. These were sections 612(a)(1)(A) and section 615(k). These are shown as US Code 1412(a)(1)(A) and US Code 1416(k) in Appendices A and B, respectively.

Section 612(a)(1)(A) describes conditions under which states are eligible to receive federal funding for special education programs (see Appendix A). The legislation requires that states provide educational services to all students with disabilities, even those suspended long-term or expelled, in order to receive federal funds (PL 105-17).

Section 615(k)(1)(A) gives unilateral authority for school officials to remove from their current educational settings students with disabilities exhibiting certain inappropriate behaviors (see Appendix B). Reflecting the decision in Honig (1988), section 615(k)(1)(A)(i) allows school officials to remove students with disabilities from their current educational settings for up to 10 days, if they exhibit inappropriate behaviors. Reflecting the Jeffords' Amendment, section 615(k)(1)(A)(ii) allows school

officials to remove students with disabilities to an alternative educational setting for up to 45 days, if these students bring weapons or drugs to school.

Section 615(k) reflects two modifications of the Honig (1988) decision (see Appendix B). Section 615(k)(2) allows a hearing officer, under certain conditions, to remove students with disabilities to an alternative educational setting for up to 45 days, if these students exhibit dangerous behaviors. Section 615(k)(7)(a) defines the "stay-put" placement during placement disputes as the alternative educational setting, for students bringing weapons or drugs to school or for students exhibiting dangerous behaviors.

The remainder of section 615(k) is prescriptive in nature. It describes procedures to be used when determining whether or not students' inappropriate behaviors are related to their disabilities; it provides definitions of terms; and it describes the roles of various personnel in making disciplinary action decisions (see Appendix B).

Satisfaction with Balance

When developing the 1997 IDEA discipline provisions, key actors used the consensus process and strategic posturing to balance the conflicting views of seven policy issues and six influential factors. Perceptions of their success in developing a balanced policy follow.

Special Interest Groups' Perspectives

Key informants had different degrees of satisfaction with the resulting 1997 IDEA discipline provisions. The policy analyst for a special interest group representing individuals with disabilities appeared to be the most satisfied with the discipline provisions. She shared, "When you go through a consensus process, it's a compromise.

Not everybody's going to be happy. We think it's a good law. I think we're happy with the protections it provides kids" (SDF2).

The lobbyist for a special interest group representing general education administrators appeared less satisfied. She said, "It's more than we had. It's not enough. It was better, and that's what I said to our members. Our members have mixed feelings about it" (SEF4).

The director for a special interest group representing special education administrators appeared to be the least satisfied with the 1997 IDEA discipline provisions. She said, "We would have preferred that it was not in federal law. That it's in federal law OK. I think that in some ways we put the cart before the horse. I don't think we've helped the situation" (SDEF3).

Perspectives of Key Actors

Key actors were consistent in their general satisfaction with the 1997 IDEA discipline provisions and with the processes used to develop them. The staff member for a high-ranking Democrat in the House stated, "Well, I think the [consensus] process was effective to produce a Bill *I* think ultimately can withstand close scrutiny by all sides" (GSM4). The staff member for a high-ranking Republican in the Senate said, "The consensus process was a successful effort ... We needed to have something that was fair. And I think we found something that was fair" (GSM5).

The staff member for a high-ranking Republican in the House expressed general satisfaction with the 1997 IDEA discipline provisions. He said:

> I view, in the aggregate, the discipline provisions and IDEA as it was passed in 1997 as a substantial improvement over the previous law. There is more clarity in current federal discipline law for students with disabilities than there ever has been before (GHM3).

The director in the US Department of Education also indicated general satisfaction with the 1997 IDEA discipline provisions. He stated, "We were pleased with the Bill in general. The final Bill does give school districts more options than had existed in old law ... There's quite a bit of flexibility that wasn't there before that I think is appropriate" (GUM2).

All key actors recognized the role of compromise in attempting to achieve balance in the 1997 IDEA discipline provisions. The staff member for a high-ranking Republican in the House summarized their thoughts. He said, "I take what I consider a realist view of federal or state policy development through law. There are no perfect laws. They are all compromises" (GHM3).

CHAPTER 6: DISCUSSION AND CONCLUSIONS

Overview

The purpose of this study was to describe and analyze the factors influencing the key actors involved in developing sections 612(a)(1)(A) and 615(k) of the 1997 Individuals with Disabilities Education Act (IDEA), from their own perspectives. To achieve the purpose, interviews were conducted with key actors involved in developing these two sections, known as the 1997 IDEA discipline provisions. Interview questions were designed to answer the following questions proposed in the organizational framework:

1. Who were the key actors in the framing of the 1997 IDEA discipline provisions? What were their roles and how did they exert their influence?
2. How did case law regarding discipline of students with disabilities influence the framing of the 1997 IDEA discipline provisions?
3. Which special interest groups were influential in framing the 1997 IDEA discipline provisions, and how did they exert their influence?
4. How did recently passed federal legislation regarding education or individuals with disabilities influence the drafting of the 1997 IDEA discipline provisions?
5. Which federalism philosophies influenced the development of the 1997 IDEA discipline provisions?

6. Was the change in processes by which this legislation was drafted and passed considered to have significance?

The key actors in the development of the 1997 IDEA discipline provisions were:
a director in the US Department of Education during the Clinton administration;
a staff member for a high-ranking Republican in the House;
a staff member for a high-ranking Democrat in the Senate; and
a chief of staff for a high-ranking Republican in the Senate.
These key actors participated in closed-door negotiations with other congressional and administration staff to write the 1997 IDEA, including the discipline provisions.

Discussion of "Balance"

The key actors' goal was to develop a balanced policy at the federal level for prescribing discipline of students with disabilities. They attempted to do this by writing the 1997 IDEA discipline provisions, which were signed into law in June 1997.

Data obtained in this study provided insight into the term "balance." First, key actors intended to balance the need for schools to maintain environments conducive to learning with the need to safeguard the rights of students with disabilities. Second, they used a consensus process and strategic posturing to balance consideration they gave to the various sides of seven policy issues. Finally, they used the same two processes to balance the influence that case law, views of federalism, lack of data, stories, and emotions had upon them as they developed the 1997 IDEA discipline provisions.

The Policy Development Model

Analysis of the data revealed a policy development model used by the key actors. The model is based upon the key actors' beliefs, their view of federalism, and the processes they used to give balanced consideration to the policy issues and influential factors. The model is illustrated in Figure 6.1.

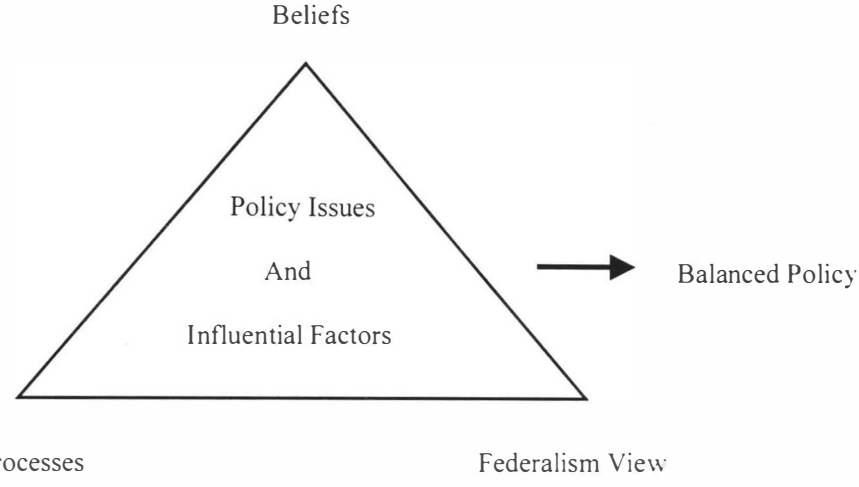


Figure 6.1. Key actors' policy development model used for developing 1997 IDEA discipline provisions.

A pattern of beliefs that key actors held emerged across data sets. Their beliefs emerged as they shared decisions they made regarding policy issues, consideration they gave to influential factors, and as they shared the processes they used to develop the 1997 IDEA discipline provisions. Because the beliefs were not thrust upon key actors and because these beliefs influenced key actors in developing the 1997 IDEA discipline provisions, these beliefs are considered to be internal influential factors.

Key actors indicated that they believed IDEA was a grant program and that participation was voluntary. Key actors articulated their belief that IDEA was Civil

Rights legislation first and education legislation second. Key actors referred time and again to their belief that school officials historically excluded students with disabilities from school settings, and that they often used disciplinary measures as a means of doing so.

These beliefs were the bases for the functional view of federalism that the key actors adopted as they developed the 1997 IDEA discipline provisions. The functional view of federalism presumes that more governmental influence at a higher level is necessary to ensure that policy is properly implemented at a lower level (Elmore, 1986). In this study, data revealed that key actors developed a prescriptive policy to ensure that states and schools would properly implement the 1997 IDEA discipline provisions. Viewing IDEA as Civil Rights legislation strengthened their resolve to ensure that states and schools would not misinterpret the 1997 IDEA discipline provisions and further exclude students with disabilities from obtaining an education. Because the functional view of federalism was not thrust upon key actors and because this view influenced key actors in developing the 1997 IDEA discipline provisions, the functional view of federalism is considered to be an internal influential factor.

With these beliefs and the functional view of federalism established, key actors used two processes to address policy issues and influential factors as they developed the 1997 IDEA discipline provisions. Key actors developed sets of guiding principles and beliefs and used these to design the consensus process. The consensus process included public hearings and closed-door negotiations among Democrat and Republican members

of Congress and the Administration. Strategic posturing consisted of timing, determining whom to involve in decisions, and negotiation and compromise.

The Policy Development Model and the Policy Issues

Analysis of the data revealed seven policy issues about which key actors made decisions. These issues were:

maintaining school environments conducive to learning;

safeguarding the rights of children with disabilities;

giving unilateral authority to school officials removing students with disabilities from school settings;

prescribing specifics of the discipline provisions;

determining when disciplinary action was warranted;

creating a dual system of discipline; and

ceasing educational and related services to children with disabilities who were suspended or expelled from school.

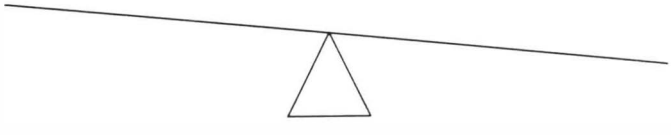
The key actors used their beliefs, their functional view of federalism, and two processes to balance consideration given to all sides of the policy issues, and to balance the decisions they made regarding the policy issues.

The prescriptive nature of the 1997 IDEA discipline provisions reflects the functional view of federalism and the beliefs of the key actors. The 1997 IDEA discipline provisions limit unilateral authority of school officials to remove from school settings students with disabilities who exhibit inappropriate behaviors; describe

objectively verifiable behaviors warranting disciplinary action; and describe conditions under which specific types of disciplinary action can be taken.

By framing the policy issues within a functional view of federalism and within their belief that schools tended to exclude students with disabilities more often than not, key actors created a policy by which educational and related services to students with disabilities can never be ceased. By requiring continuation of services, key actors removed the potential means to exclude students with disabilities from receiving an education.

The functional view of federalism, key actors' beliefs, and the processes used to make decisions about the policy issues shifted the balance of the 1997 IDEA discipline provisions toward safeguarding the rights of students with disabilities, as shown in Figure 6.2. Key actors did not perceive that shifting the policy balance more towards safeguarding the rights of students with disabilities created a dual system of discipline. In fact, they believed that to treat students with disabilities exactly the same as their non-disabled peers would reinforce a dual system by putting students with disabilities at a disadvantage. Doing so, they believed, would violate their Civil Right to a free and appropriate public education.



Maintaining Environments Conducive to Learning

Safeguarding Rights of Students with Disabilities

Figure 6.2. The effect on policy balance: Decisions made regarding policy issues.

The Policy Development Model and Influential Factors

Analysis of the data revealed that six external factors influenced the key actors as they developed the 1997 IDEA discipline provisions. These factors were: conflicting views of federalism; other federal legislation; case law; lack of data; stories; and emotions. Key actors used their beliefs, their functional view of federalism, and two processes to guide them as they gave consideration to each of these external influential factors.

While key actors could not find any data to support the premises made by school officials that discipline of students with disabilities was a problem, they found sufficient data indicating that schools historically excluded students with disabilities from school settings and from receiving an education. This reinforced their belief that giving sole responsibility to states for disciplining students with disabilities would result in exclusion of students with disabilities from educational settings and opportunities.

It was this belief and the belief the IDEA was Civil Rights legislation that moved the key actors to adopt a functional view of federalism as described by Elmore (1986). Key actors supported a shared, intergovernmental responsibility between federal and state governments for educating and disciplining students with disabilities. Their beliefs and the functional view of federalism influenced key actors in the development of the 1997 IDEA discipline provisions more than any of the other factors did.

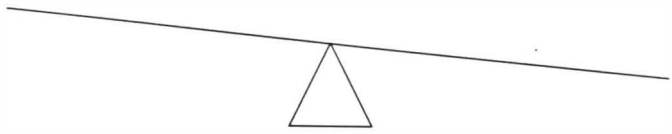
Understanding the key actors' beliefs and functional view of federalism explains why they made certain decisions regarding the external influential factors. Key actors relied on the Jeffords' Amendment to guide them in limiting the degree to which and the

manner in which students with disabilities could be removed from school settings. By codifying Honig (1988), key actors limited the number of days schools can remove students with disabilities from school settings without providing services. Key actors nullified the ruling in Riley (1997) by requiring that educational and related services be continued for students with disabilities who were expelled.

In public hearings, key actors listened to emotional stories told by individual and special interest group proponents of individuals with disabilities, and by individual and special interest group proponents of educators. What they heard indicated to them that school officials were looking for ways to exclude students with disabilities exhibiting inappropriate behaviors. These interpretations influenced them to write prescriptive legislation limiting the degree to which and manner in which students with disabilities could be excluded from school settings.

Conflicting beliefs and conflicting views of federalism among key actors, members of Congress, and special interest group representatives created the emotional turmoil surrounding the development of the discipline provisions. Key actors used the consensus process and strategic posturing to try to limit the influence of emotions on the development of the 1997 IDEA discipline provisions.

The functional view of federalism, key actors' beliefs, and the resulting consideration given to external influential factors shifted the balance of the 1997 IDEA discipline provisions toward safeguarding the rights of students with disabilities. This is shown in Figure 6.3.



Maintaining Environments Conducive to Learning

Safeguarding Rights of Students with Disabilities

Figure 6.3. The effect on policy balance: Consideration given to external influential factors.

Summary

It may appear as if the resulting 1997 IDEA discipline provisions did not "balance" schools' needs to maintain environments conducive to learning and the need to safeguard rights of students with disabilities. However, the 1997 IDEA discipline provisions allow school officials more flexibility than earlier legislation in removing students with disabilities who bring weapons or drugs to school or who exhibit dangerous behaviors. The fact that the 1997 IDEA discipline provisions are prescriptive in how that is to be accomplished does not negate the flexibility provided to school officials.

The degree of prescription in the 1997 IDEA discipline provisions is there to protect the rights of students with disabilities to receive a free and appropriate public education. This prescription is necessary in light of beliefs that schools would attempt to use disciplinary measures to exclude students with disabilities from receiving an education, given the opportunity to do so.

"Balance" must be considered in a larger sense. Key actors developed processes by which "balanced" decisions were made regarding policy issues and by which external influential factors were given "balanced" consideration. The use of the consensus

process in particular was instrumental in key actors' successfully developing IDEA legislation. It is this researcher's conclusion that the key actors perceived they developed a balanced federal policy regarding discipline of students with disabilities.

Discussion of the Findings and Research

The review of literature for this study was divided into two sections: the historical perspective and the review of research. This discussion relates the findings of this study to each, and addresses areas for future research.

Historical Perspective

The historical perspective portion of the review of literature conducted for this study traced origins of special education legislation and its revisions from the 1950's through 1997. It was determined that at times when major revisions were made to federal legislation regarding educating students with disabilities, several events usually occurred at or near the times of the major revisions. These events were conflicting views of federalism; increased involvement of courts in establishing case law related to education or to individuals with disabilities; increases in special interest group activity; and passage of other federal legislation related to education or to individuals with disabilities. It could not be determined through this review, however, whether or not these events had any direct influence on the revisions made to federal legislation regarding educating students with disabilities.

This study used historical documents and also data obtained through interviews with key actors involved in the development of the 1997 IDEA discipline provisions to determine which factors, if any, may have influenced them as they developed the 1997

IDEA discipline provisions. The data from this study allow one to conclude that the factors revealed in the historical perspective influenced key actors involved in developing the 1997 IDEA discipline provisions. Of these factors, the key actors' functional view of federalism most influenced the decisions made regarding policy issues and consideration given to other external factors.

The data from this study revealed two events concurrent with the development of this legislation that did not appear in the historical perspective. First, key actors articulated the beliefs that influenced them to adopt a functional view of federalism when developing the 1997 IDEA discipline provisions. They also used these beliefs to develop guidelines and procedures by which they drafted 1997 IDEA legislation.

Also, a new process was designed and used for drafting, developing and passing the 1997 IDEA: the consensus process. The consensus process consisted of closed-door negotiations among Democrat and Republican members of Congress and the Administration. Weekly public hearings were also part of the consensus process. Data indicate that the consensus process was instrumental in the successful development of the 1997 IDEA discipline provisions.

Review of Research

The review of research revealed conclusions drawn from various studies on the degree of influence federalism, courts, special interest group activity, and other federal legislation have had on the development of federal legislation or on members of Congress. The review of research revealed that these four factors have been studied in isolation, and data suggested that they are influential in the development of legislation.

Federalism

Key actors adopted a functional view of federalism described by Elmore (1986). The functional view presumes that more governmental influence is necessary at a higher level to ensure proper policy implementation at a lower level. The functional view of federalism appeared to influence key actors' decisions made regarding policy issues and the consideration they gave to external influential factors while developing the 1997 IDEA discipline provisions.

Key actors used the functional view of federalism to balance the consideration they gave to external influential factors and to guide them as they made decisions about policy issues. Key actors were more prescriptive in the development of the discipline provisions to ensure that states and schools would properly implement discipline policy and not exclude students with disabilities exhibiting inappropriate behaviors from educational settings or from receiving educational and related services.

The rationale key actors used to adopt a functional view of federalism can be explained by various theories about federalism. Interview data from this study explain why key actors adopted a functional view of federalism, thereby extending further the federalism theories of Wildavsky (1998), Elazar (1972) and Peterson (1995). Key actors rationalized the prescriptive nature of the 1997 IDEA discipline amendments by stating that IDEA is a voluntary grant program for which states receive funds; therefore, prescription is warranted. On several occasions, key actors rationalized the prescriptive nature of the 1997 IDEA discipline provisions by pointing to states' and schools' tendencies to exclude from schools students with disabilities exhibiting inappropriate

behaviors. They also framed IDEA as Civil Rights legislation, and determined that a prescriptive federal policy was warranted.

Interviews with key informants verified that Republicans were less supportive of a functional view of federalism than were Democrats, as McClay (1995) and Gold (1996) suggested in their studies. However, Democrat and Republican key actors held a strong belief that IDEA was Civil Right legislation first and education legislation second. Because of their strong system of beliefs, key actors supported the prescriptive nature of the 1997 IDEA discipline provisions. This suggests that IDEA legislation as a whole and the 1997 IDEA discipline provisions in particular are not likely to be part of the devolution evolution trend in the near future.

Courts

Results of this study supported and extended the findings of Adamany and Grossman (1989). Key actors drafting the 1997 IDEA discipline provisions were representative sub-groups of political parties, houses of Congress and Administration. As participants in the consensus process, they were strategically positioned to support or nullify federal case law. Key actors codified several aspects of the Honig (1988) decision in the 1997 IDEA discipline provisions. Conversely they were in a strategic position to nullify the Riley (1997) decision that conflicted with their ideology, and they did so purposefully.

Levine and Beckler (1973) indicated that virtually no research exists to explain how Congress determines to codify or nullify federal court rulings. The data gathered in this study explain why the key actors made the decisions they did in codifying or

nullifying case law. Their decisions were based upon their functional view of federalism grounded in their beliefs that schools would attempt to exclude students with disabilities from educational opportunities using disciplinary action, and that IDEA was Civil Rights legislation designed to protect the rights of students with disabilities.

The rationale behind nullifying Riley (1997) is of particular interest. Key actors were concerned that circuit courts had handed down conflicting rulings on the issue of whether or not to cease services to students with disabilities who were removed from school settings; some circuits did not allow services to cease, while others did (the Fourth Circuit in particular). Key actors were also concerned that the issue might come before the Supreme Court. There was concern among Democrats that the Supreme Court might rule to allow ceasing of services, thus rendering the Administration's position moot. They determined that the best way to handle the situation, in light of these issues and their beliefs, was to prescribe in federal legislation that states could not cease services to students with disabilities who exhibited inappropriate behaviors and who were removed from school settings.

One aspect of the influence of courts on federal legislation emerged in this study that was not found in the review of research. While developing the 1997 IDEA discipline provisions, key actors determined which aspects of the provisions had the potential to become issues for future litigation. They then intentionally developed those aspects of the discipline provisions to be detailed and specific. Their intent was to remove from the courts interpretation of the legislation, and thus reduce the likelihood of future litigation of certain disciplinary issues.

Special Interest Group Activity

As Sheppard (1985) suggested, data from this study indicated a high level of special interest group activity in favor of the legislation by special interest groups representing the beneficiaries (students with disabilities) and a high level of activity opposing the legislation by special interest groups representing those responsible for bearing the cost of the legislation (school officials). Data obtained in this study supported Bailey's (1975) and Davis's (1995) findings that special interest group representatives preferred to illustrate their points of view by using stories tied to emotional issues rather than by using hard data.

Smith (1995) and Evans (1996) indicated that no direct causal link could be drawn between special interest group activity and congressional support for legislation. The data from this study suggest that the stories shared by special interest groups were given direct consideration by key actors during the consensus process, and that the stories shared did have an impact on the resulting legislation.

The degree to which key actors considered various stories from the different interest groups was influenced by their functional view of federalism and their beliefs, however. Therefore, one could not conclude that special interest group activity directly caused certain aspects of the 1997 IDEA discipline provisions to be included in the legislation.

Other Federal Legislation

Studies conducted on other federal legislation indicated that one piece of legislation can influence the development of another (Goren, 1997). Data collected in

this study through interviews with key actors confirmed that the Gun Free Schools Act of 1994 and the Jeffords' Amendment to IDEA in 1994 influenced the development of certain aspects of the 1997 IDEA discipline provisions.

Other studies indicated that staff were influential in shaping legislators' decisions about legislation, and therefore in shaping the legislation itself (Roberson, 1987; Milbrath, 1963). Data obtained in this study added another dimension to the influence of staff in developing legislation and in garnering Congress members' support. The key actors were members of congressional and administration staff. As members of the consensus committee, they wrote, and therefore influenced the development of, the 1997 IDEA discipline provisions. Interview data indicated that the key actors were responsible for obtaining their members' support for the decisions made by the consensus committee. In that sense, then, they influenced Congress members.

None of the studies on the development of legislation directly addressed the influence of personally held beliefs on legislators' policy decisions. Roberson (1987) studied the influence of "personal feelings" on state legislators' voting patterns, but he did not find it to be a statistically significant influence. Data from this study suggest that key actors' beliefs were strong internal influences. The beliefs they held supported the functional view of federalism they adopted, shaped the decisions they made about conflicting policy issues, framed their considerations of external influential factors, and guided the processes they used to develop the 1997 IDEA discipline provisions.

None of the studies on the development of federal legislation revealed information about the processes used to develop the legislation. Analysis of data from

this study uncovered key actors' development and use of the consensus process and strategic posturing to develop the 1997 IDEA discipline provisions. Analysis of data from this study lead to the formation of a policy development model used by key actors to develop the 1997 IDEA discipline provisions.

Suggestions for Future Research

A policy development model used by key actors emerged from the data analysis in this study. Because this was a case study, it cannot be assumed that legislators use this model when developing other federal legislation. Further research is needed to ascertain if this model is applicable to the development of other federal education-related legislation. Such research may clarify the roles that beliefs, federalism views, and processes play in shaping federal legislation.

Although IDEA was signed into law relatively recently, opportunities exist for amending the legislation both before and during its next reauthorization. The design and methodology presented in this study could be used to study the next reauthorization of IDEA. Describing and analyzing the factors influencing key actors during the next reauthorization would provide insight into the development of any potential patterns of influential factors in the development of federal special education law. Information obtained would be useful to states and school divisions in developing policies regarding education of students with disabilities.

Within that context, any one influential factor or any one policy issue could be studied in depth, using the design and methodology of this study. Because the data from

this study suggest that beliefs and the view of federalism held by key actors were influential factors in shaping policy, research should begin with those two factors.

One reason key actors intentionally developed prescriptive 1997 IDEA discipline provisions was to remove certain interpretations of the legislation from the courts. Therefore, emerging case law and its future influence on federal special education legislation should be studied.

In the past, US Department of Education regulations, which interpret the law and provided a base for state regulations governing special education, have been developed soon after federal special education law was passed. However, almost two years passed between the signing of IDEA into law in 1997 and the release of US Department of Education regulations in 1999. The design and methodology used in this study could be used to determine how the US Department of Education regulations were developed to interpret federal special education law. Information obtained would be useful to states and school divisions in developing policies regarding education of students with disabilities.

Implications

The findings of this study have implications for special education policy development at state and local levels. In particular, the goals, beliefs, and view of federalism of the key actors should guide officials at state and local levels as they develop policy regarding the discipline of students with disabilities.

Key actors and key informants indicated that no data were available from which policy decisions regarding discipline of students with disabilities could be made; this

elevated the attention paid to stories shared in public hearings. Schools and states should develop policies and practices supporting the collection of hard data regarding discipline of students with disabilities. Data could include types of offenses, proactive measures taken, and numbers of assignments to and types of alternative educational settings.

Policies regarding discipline of students with disabilities should attain the goal of maintaining school environments conducive to learning while protecting the rights of students with disabilities. Policies should be written to ensure that state and school officials are able to avail themselves of the opportunities provided in the 1997 IDEA discipline provisions to remove from school settings students with disabilities exhibiting truly dangerous "objectively verifiable" behaviors, such as bringing weapons or drugs to school.

Key actors viewed IDEA as Civil Rights legislation first and education legislation second. They also perceived that school officials unnecessarily excluded students with disabilities from school settings, and that they often used disciplinary actions as a means to do so. Therefore, policies developed regarding discipline of students with disabilities should not support disciplinary action as a first step for those inappropriate behaviors that are open to more subjective interpretation. Policies should be proactive, with the focus on providing proper placement and services to students with disabilities, on teaching them appropriate behaviors, and on stopping inappropriate behaviors before they start.

Key actors supported the continuing of educational and related services to students with disabilities who are expelled. Those who were uneasy with this indicated that their feelings stemmed from the fact that continuing services was not required for

general education students who were expelled. These same key actors adopted a functional view of federalism, which supports federal intervention into school policy. The potential exists, therefore, for federal law to require that states and schools continue to provide educational services to all students who are expelled from school settings. For these reasons, states and schools should strongly consider developing discipline policies that would allow for continuation of educational services in a variety of alternative educational settings for all students who are suspended long-term or expelled.

Conclusions

The goal of the key actors writing the 1997 IDEA discipline provisions was to develop a policy that balanced schools' needs to maintain environments conducive to learning with safeguarding the rights of students with disabilities. To develop this balance, key actors had to make decisions regarding: the amount of unilateral authority school officials should have in determining when disciplinary action was warranted; the degree of prescription of the discipline provisions; the creation of a dual system of discipline; and whether or not educational and related services should be ceased to students with disabilities removed from school settings for exhibiting certain inappropriate behaviors. These decisions had to be made as key actors also gave consideration to external influential factors such as case law, conflicting views of federalism, special interest group activity, and other federal legislation.

The policy development model used by key actors was instrumental in their reaching their goal. Key actors' beliefs, their functional view of federalism, and

processes used shaped the decisions they made regarding policy issues and the consideration they gave to external influential factors.

The resulting 1997 IDEA discipline provisions are prescriptive in nature. The prescription is intentional, to remove from courts and school officials many potentially subjective interpretations of the law.

State and local policies developed regarding discipline of students with disabilities should reflect an understanding of the beliefs and goals of the key actors. While maintaining environments conducive to learning, schools must safeguard the rights of students with disabilities and be proactive in their handling of discipline situations. In the words of one key actor, the message sent by the 1997 IDEA discipline provisions is, "Try. Try again. And try harder. And if it doesn't work, then take action" (GSM4).

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Appendix A

US Code Referencing Section 612(a) (1) (A) of the 1997 IDEA

*** THIS SECTION IS CURRENT THROUGH 105-174, APPROVED 5/1/98 ***

TITLE 20. EDUCATION
CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

20 USCS § 1412
(1998)

§ 1412. State eligibility [Caution: For effectiveness. until July 1, 1998, of certain provisions of 20 USCS §§ 1400 et seq. and 1411 et seq., as in effect prior to amendment by Act June4, 1997, P.L. 105-17, see §201(a)(2)(C) of such Act, which appears as 20 USCS § 1400 note. For text of this section prior to the June 4, 1997 amendment, see Explanatory note.]

(a) In general. A State is eligible for assistance under this part [20 USCS §§ 141 1 et seq.] for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

(1) Free appropriate public education.

(A) In general. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. .

Appendix B

US Code Referencing Section 615(k) of the 1997 IDEA

TITLE 20. EDUCATION
CHAPTER 33. EDUCATION OF INDIVIDUALS WITH DISABILITIES ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH DISABILITIES

20 USCS § 1415 (1998)

§ 1415. Procedural safeguards [Caution: For effectiveness, until July 1, 1998, of certain provisions of 20 USCS §§ 1400 et seq. and 1411 et seq., as in effect prior to amendment by Act June 4, 1997, P.L.105-17, see § 201(a)(2)(C) of such Act, which appears as 20 USCS § 1400 note. For text of this section prior to the June 4, 1997 amendment, see Explanatory note.]

(k) Placement in alternative educational setting.
(1) Authority of school personnel.
(A) School personnel under this section may order a change in the placement of a child with a disability—
(i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities); and
(ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if--
(I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or
(II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

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

(i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or

(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior.

(2) Authority of hearing officer. A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer--

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

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

(C) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and (D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B).

(3) Determination of setting.

(A) In general. The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team.

(B) Additional requirements. Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall--

(i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP. and,

(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur. .

(4) Manifestation determination review.

(A) In general. If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children--

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

(ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the

relationship between the child's disability and the behavior subject to the disciplinary action.

(B) Individuals to carry out review. A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel.

(C) Conduct of review. In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team--

(i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--

(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

(II) observations of the child; and

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

(ii) then determines that--

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

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(Ill) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(5) Determination that behavior was not manifestation of disability.

(A) In general. If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1) [20 USCS § 1412(a)(1)].

(B) Additional requirement. If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(6) Parent appeal.

(A) In general.

(i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing.

(ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent.

(B) Review of decision.

(i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's

behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C). .

(ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).

(7) Placement during appeals.

(A) In general. When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (l)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

(B) Current placement. If a child is placed in an interim alternative educational setting pursuant to paragraph (l)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C).

(C) Expedited hearing.

(i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing.

(ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2). .

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

(A) In general. A child who has not been determined to be eligible for special education and related services under this part [20 USCS §§ 1411 et seq.] and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part [20 USCS §§ 1411 et seq.] if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(B) Basis of knowledge. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if--

(i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(ii) the behavior or performance of the child demonstrates the need for such services;

(iii) the parent of the child has requested an evaluation of the child pursuant to section 614 [20 USCS § 1414]; or

(iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.

(C) Conditions that apply if no basis of knowledge.

(i) In general. If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with clause (ii).

(ii) Limitations. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part [20 USCS §§ 141 I et seq.], except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities. -

(9) Referral to and action by law enforcement and judicial authorities.

(A) Nothing in this part [20 USCS §§ 141 I et seq.] shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(IO) Definitions. For purposes of this subsection, the following definitions apply:

(A) Controlled substance. The term "controlled substance" means a drug or other substance identified under schedules I, II, Ill, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(B) Illegal drug. The term "illegal drug"--

(i) means a controlled substance; but

(ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(C) Substantial evidence. The term "substantial evidence" means beyond a preponderance of the evidence.

(D) Weapon. The term "weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

(l) Rule of construction. Nothing in this title [20 USC §§ 1400 et seq.] shall be construed to limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973 [29 USCS §§ 790 et seq.], or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part [20 USCS §§ 141 1 et seq.], the procedures under subsections (1) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part [20 USCS §§ 141 1 et seq.].

(m) Transfer of parental rights at age of majority.

(1) In general. A State that receives amounts from a grant under this part (20 USCS §§ 1411 et seq.] may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)--

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this part (20 USCS §§ 141 1 et seq.] transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this part [20 USCS § § 141 I et seq.] transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule. If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish

procedures for appointing the parent of the child, or if the parent is not available, another appropriate

individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part [20 USCS §§ 1411 et seq.]. .

Appendix C

Data Sources for Answering Organizational Questions and Research Questions

	Interview	Documents
Who were the key actors?	X	X
What were their roles?	X	
How did they exert influence?	X	
How did special education discipline court cases influence the framing of the discipline provisions?	X	X
Which special interest groups were influential?	X	X
How did they exert influence?	X	
How did other federal legislation shape the discipline provisions?	X	X
Which federalism philosophies influenced the development of the discipline provisions?	X	
What was intended and accomplished by including the discipline provisions in the federal legislation?	X	X
What were the major areas of discussion?	X	
Which sections of the discipline provisions were more easily agreed upon?	X	
What were the bases for those agreements?	X	
What were the bases for those controversies?	X	

	Interview	Documents
How were the controversies resolved?	X	
How were specific time limits, disciplinary offenses, and disciplinary actions and procedures arrived at?	X	

Appendix D

Interview Questions for Government Sub-sample

What was your role in the development of the 1997 IDEA discipline provisions?

What was it that you wanted to help ensure for students by developing these provisions?

Which aspects of the discipline provisions were most easily agreed upon? Why do you think that was so?

Which aspects of the discipline provisions were more controversial? Why do you think that was so?

How were the controversies resolved?

Time limits of 10 days and 45 days for unilateral changes in placement were written into the legislation. Where did these time limits come from?

How was it decided that the 45-day change in placement would only apply to certain disciplinary offenses?

What was the thinking behind continuing services to disabled students who were suspended long-term or expelled?

Did you feel that these provisions were too prescriptive or not prescriptive enough? What lead to your thinking?

How did the discipline provisions "fit" with the 10th Amendment of the US Constitution, which indicates that education is a state responsibility?

How did the concept of these provisions originate?

Who else participated in the development of the discipline provisions?

Can you think of any other information that would help shed light on the development of the 1997 IDEA discipline provisions?

Appendix E

Interview Questions for Special Interest Group Sub-sample

What was your role in the development of the 1997 IDEA discipline provisions?

What was it that you wanted to help ensure for students by developing these provisions?

What strategies did your organization use to make their views about the provisions known to those who would be writing the provisions?

Which aspects of the discipline provisions were most agreeable to your organization? Why do you think that was so?

Which aspects of the discipline provisions were less accepted by your organization? Why do you think that was so?

Which aspects of the discipline provisions caused the most controversy during the reauthorization process? Why do you think that was so?

How were the controversies resolved?

Time limits of 10 days and 45 days for unilateral changes in placement were written into the legislation. Where did these time limits come from?

How was it decided that the 45-day change in placement would only apply to certain disciplinary offenses?

What was the thinking behind continuing services to disabled students who were suspended long-term or expelled?

Did you feel that these provisions were too prescriptive or not prescriptive enough? What lead to your thinking?

Overall, how do you feel about the resulting legislation regarding discipline of special education students?

Which other special interest groups closely monitored the development of the discipline provisions?

Can you think of any other information that would help shed light on the development of the 1997 IDEA discipline provisions?

Appendix F

Codes and Descriptions of Documents Reviewed for this Study

GI4-1: House panel OKs aid to disabled. (1990, May 5) Congressional Quarterly Weekly Report, 48 (18), 1355.
This document describes the controversy between Rep. Owens (D-NY) and Rep. Bartlett (R-TX) regarding whether or not reference to allowing corporal punishment of students with disabilities should be included in 1990 IDEA revisions.

GL4-2: Gun Free Schools Act, 20 USC § 8921 (1994, 1998).
This law requires that schools establish procedures for the immediate removal from school of any student bringing a gun to school or to a school function.

GL4-3: Individuals with Disabilities Education Act of 1990, P. L. No. 101-476 (1990). Section 615(e)(3) of this law requires that if a dispute arises over the placement of a child with a disability, that the child remain in the current educational placement until the dispute is resolved.

GI4-4: Internal memo with Congressional Record – Senate, July 28, 1994, p. 10008-10009 attached. The memo and Congressional Record describe the rationale and the wording of the proposed Jeffords' Amendment to IDEA, which would allow removal of a student with a disability who brings a gun to school to an alternative educational setting for up to 45 days.

SI5-5: January, 1997, position paper for a national-level special interest group representing special education administrators. The paper reiterates their original stand from May, 1995, that Congress should require states to develop procedures by which students with disabilities are disciplined, rather than prescribe these procedures itself.

GL5-6: H. R. 3268. House version of IDEA passed by the House in April, 1996.

GL5-7: S. 1578. Senate version of IDEA drafted in committee in May, 1996.
This Bill never came to the Senate floor for a vote.

GL5-8: Jeffords' Amendment, 1994. The Amendment allowed school personnel to remove to alternative educational settings for up to 45 days students with disabilities bringing guns to school.

GL5-9: Honig v. Doe, 484 US 305; 108 S.Ct. 592 (1988). The decision in Honig allows school officials to remove students with disabilities from school settings for up to 10 days for exhibiting inappropriate behaviors. The decision allows school officials to seek judicial assistance in situations requiring emergency removal of such students. It stipulates that if the removal is disputed, the student must remain in the current educational placement, or "stay-put" until the dispute is resolved.

GI5-10: Statement of Principles Relating to IDEA. This document was developed by key actors involved in closed-door consensus negotiations to draft the 1997 IDEA legislation. The principles outline beliefs used to guide them in making decisions about rules, procedures, and content of the Bill.

Appendix G

Topics Identified Through Analysis of Interview Data, Government and Special Interest Group Sub-samples

Anecdotes

Beliefs

Intent

Case Law

Consensus Process

Controversies

Data

Dual System

Federalism Views

Origins of Discipline Provisions

Other Federal Legislation

Resolution of Controversies

Satisfaction With Final Legislation

Strategy

Appendix H

Sample Letter and Attachments Mailed to Key Informants

Dear XXXX,

Thank you for talking with me about gathering information for my dissertation. I am sure you and your staff are busy with many critical issues, and I appreciate your making time to talk with me about my dissertation.

I am a former public school teacher and administrator, and I currently work for Virginia Commonwealth University and thirteen school divisions. In these capacities it has been my responsibility, among other things, to ensure proper implementation of special education policy in public school settings.

The purpose of my dissertation is to describe, from the perspective of those involved in the process, the factors that influenced the development of the discipline provisions during the last reauthorization of the Individuals with Disabilities Education Act. For the purposes of the dissertation, I am defining the discipline provisions as sections 612(a)(1)(A) and 615(k) of the 1997 IDEA. A brief description of the study is enclosed for your review.

It is my intent to formally interview at least three representatives of special interest groups and at least three representatives of the federal government or federal agencies. As I mentioned in our phone conversation, your perspective would be valuable to this study.

I am enclosing preliminary interview questions. These questions would serve as a guide for our interview, although some may not be used at all if you determine they are inappropriate.

It will be necessary for me to take notes during our interview, and I would like to request permission at this time to also tape record the interview. Based upon past experience, I anticipate that the interview would take about 45 minutes.

Any information that you do not wish to be discussed will not be discussed, and any information that you wish to remain off the record will be regarded as such. At the end of the interview, you will have the opportunity to request that additional information

be deleted from the study. I will also provide you with a transcript of the interview for your review prior to any of the information being included in the study.

I would like to emphasize that the names of key informants will not be used in the dissertation. The confidentiality of all key informants will be maintained, and their names will not be released.

Again, I appreciate the time you are giving to consider this request. I hope you will consent to an interview, as your perspective will be critical to the success of the study.

Sincerely,

Cheri Magill

Federal Special Education Law and Discipline of Students with Disabilities: A Description of the Factors Influencing The Key Actors Involved in Developing Sections 612 (a)(1)(A) and 615(k) Of the 1997 Individuals with Disabilities Education Act

Until the latest reauthorization of the Individuals with Disabilities Education Act (IDEA), policies regarding discipline of students with disabilities were set primarily by case law. In 1995, however, the debates over reauthorization of the IDEA focused on proposed provisions designed to describe the measures and procedures to be used by public school officials when disciplining students with disabilities. The proposed discipline provisions, in part, caused a delay in the reauthorization of the Act.

The purpose of this study is to describe the factors influencing those most closely involved in the development of the two sections of the 1997 IDEA that address discipline of students with disabilities.

A review of the literature suggests that certain factors have influenced the development of other federal legislation. These factors are: case law; special interest group activity; views of federalism; and other related legislation passed at about the same time.

The design of this study will be a case study. Interviews will be conducted with key informants from government and special interest groups. A list of potential key informants has been created by noting the names of persons and organizations mentioned in historical documents addressing the reauthorization of IDEA. While responses of key informants will be part of the data cited in the dissertation names of participants will be kept confidential and will not appear in the final document.

Questions will be designed to elicit responses that will describe the factors influencing key actors involved in developing the discipline provisions of IDEA. Interviews will be scripted and tape-recorded. Interview data will be corroborated with appropriate historical documents.

Data will be analyzed inductively. Recurring topics and categories will be analyzed to uncover patterns of the data.

Preliminary Interview Questions

What was your role in the development of the 1997 IDEA discipline provisions during the last reauthorization?

What was it that you wanted to help ensure for students with disabilities as these provisions were being drafted?

How did the concept of adding these provisions originate?

How did special interest groups make known their views about the provisions?

Which aspects of the discipline provisions, if any, were most easily agreed upon? Why do you think that was so?

Which aspects of the discipline provisions caused the most controversy during the reauthorization process? Why do you think that was so?

How were the controversies resolved?

Time limits of 10 days and 45 days for unilateral changes in placement were written into the legislation. Where did these time limits come from?

How was it decided that the 45-day change in placement would apply only to certain disciplinary offenses?

What was the thinking behind continuing services to students with disabilities who were suspended long-term or expelled for reasons unrelated to their disabilities?

Did you feel that these provisions were too prescriptive or not prescriptive enough? What lead to your thinking?

Overall, how do you feel about the resulting legislation regarding discipline of students with disabilities?

Who else participated in the development of the discipline provisions?

Vita