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SUSPENSIONS AND EXPULSIONS UNDER THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT: VICTORY FOR HANDICAPPED CHILDREN OR DEFEAT FOR SCHOOL OFFICIALS?

I. INTRODUCTION

Mainstreaming handicapped children¹ in public schools creates new demands and expectations on regular classroom personnel.² Schools must comply with statutory procedural requirements, identify handicapping conditions, provide adequate individualized programs, and supervise and discipline handicapped children.³ School officials have encountered particular uncertainty in determining how to discipline disruptive handicapped children.⁴ Under the Education for All Handicapped Children Act (EAHCA), disabled students are entitled to pro-

1. Handicapped "children" are those between the ages of 3 and 21 who require special education and related services because they fall within the definition of handicapped. 20 U.S.C. § 1401(1) (1976). See *infra* note 23 for a definition of "handicapped." This Note uses the terms "handicapped" and "disabled" interchangeably. As of December 1982, 4.298 million children were identified as receiving special education and related services under the Education for All Handicapped Children Act. See *Recent Federal Legislation Affecting Disabled Persons*, 20 CLEARINGHOUSE REV. 1173 (1987).

2. Rothstein, *Accountability For Professional Misconduct in Providing Education to Handicapped Children*, 14 J. LAW & EDUC. 349 (1985).

3. *Id.* at 350. See 20 U.S.C. §§ 1400-61 (1976).

4. Rothstein, *supra* note 2, at 371.

cedural protections not offered to their nondisabled peers.⁵ The Act ensures that all disabled children receive a free appropriate education and applies whenever schools try to hinder a disabled child's access to education.⁶ Suspensions, expulsions, and transfers to more controlled environments remove the student from his current course of study and, in effect, change his placement.⁷ Thus, school officials cannot suspend or expel disruptive disabled students in the same manner as disruptive nondisabled students.

Expulsion, which results in total loss of educational services,⁸ is the most severe sanction school administrators may impose on disruptive students. In *Honig v. Doe & Smith*, the Supreme Court prohibited schools from expelling or indefinitely suspending disabled children for dangerous or disruptive behavior resulting from their handicap.⁹ Supporters of disabled persons' rights applauded the decision as a victory for the handicapped. School officials, however, advocate the use of one

5. *See Doe v. Maher*, 793 F.2d 1470, 1480 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988) (case addressing the clash between procedural rights of handicapped children and authority traditionally accorded public school officials).

6. Comment, *The Rights of Handicapped Students in Disciplinary Proceedings by Public School Authorities*, 53 U. COLO. L. REV. 367, 372 (1981). Legislation enacted to protect handicapped children includes the Rehabilitation Act, 29 U.S.C. §§ 701-94 (1973) and the Education for All Handicapped Children Act, 20 U.S.C. § 1401-61 (1976). This legislation resulted from congressional findings that a large number of handicapped children failed to receive an adequate education, either because their handicaps went undetected or because of a lack of sufficient services once public schools did detect such handicaps. The widespread practice of relegating handicapped children to private institutions or segregating them in special classes evoked great congressional concern. Congress recognized that countless handicapped children did not receive a meaningful public education simply because states lacked the funds and initiative to address the special problems involved in teaching such children. 20 U.S.C. § 1401(b) (1976). *See infra* notes 46-55 and accompanying text (discussing the Education for All Handicapped Children Act's approach to program changes).

7. Comment, *supra* note 6, at 370. A suspension constitutes a temporary removal, while an expulsion is a permanent removal from the classroom. Both interrupt the child's school work. *Id.* Children have both liberty and property interests in education. Thus, their right to attend school may be compromised only with good reason. Children's educational and individual rights are balanced against the school authorities' duty to provide all students with a safe school environment that is conducive to learning. *Id.* *See infra* note 85 (discussing *Goss v. Lopez*, 419 U.S. 565, 576 (1975), which held that education is a property interest protected by the due process clause).

8. Removal from school terminates the student's access to the resources of public education.

9. 108 S. Ct. 592 (1988). *See infra* notes 60-66 and accompanying text for a discussion of *Honig*.

disciplinary system for all children; otherwise, disabled children would be immune from discipline.¹⁰ Anticipating this criticism, the Court noted that Congress did not leave school officials powerless to discipline handicapped students. Schools could use temporary suspensions and interim placements, subject to parental approval.¹¹

This Note examines the Education for All Handicapped Children Act, which Congress enacted to ensure that every handicapped child receives a free, appropriate public education. Sections II and III discuss the legislative history and the basic provisions of EAHCA. Section IV examines conflicts between EAHCA and school disciplinary measures. Sections V and VI discuss why disabled children and their parents oppose suspensions and expulsions and why school officials advocate the use of such measures. This Note concludes by discussing the Supreme Court's narrowing of schools' traditional authority and suggesting alternative disciplinary measures.

II. LEGISLATIVE HISTORY

The Education for All Handicapped Children Act of 1975¹² guarantees handicapped children specific rights. It is the primary source of federal funding to state agencies that provide special educational and other services for disabled children.¹³ This legislation reflects an in-

10. See *infra* notes 102-42 and accompanying text for a discussion of arguments favoring suspensions and expulsions.

11. *Honig*, 108 S. Ct. at 604. The procedural protections of the Education for All Handicapped Children Act are invoked whenever school officials act to hinder a handicapped child's access to education. See *infra* note 30 (listing procedural protections under EAHCA).

12. Pub. L. No. 94-142, 89 Stat. 775 (1975) (codified as amended at 20 U.S.C. §§ 1400-61 (1976)).

13. EAHCA provides federal grants to state education departments. These departments then channel most of the funds to local agencies that provide direct services to handicapped children. Before a state can qualify for federal funds, it must adopt a policy assuring all handicapped children an appropriate public education in the least restrictive environment. Compliance is assured by provisions that permit the withholding of funds upon a determination that a state or local agency has failed to satisfy EAHCA's requirements. 20 U.S.C. § 1414(b)(2)(A) (1976).

Congress did not intend EAHCA to provide all funding for educating handicapped children. Rather, it intended the Act to relieve part of the burden of the high cost of such education. See L. ROTHSTEIN, RIGHTS OF PHYSICALLY HANDICAPPED PERSONS § 2.12 (1984). On average, educating a handicapped child costs twice as much as educating a nonhandicapped child. *Id.* See *Smith v. Robinson*, 468 U.S. 992 (1984) (Congress enacted EAHCA to remedy the inadequacy of educational services provided for the nation's handicapped children).

creased awareness of disabled children's educational needs¹⁴ and results from the discovery that more than half the nation's handicapped children did not receive an adequate education.¹⁵ Congress also promulgated EAHCA in response to *Mills v. Board of Education of the District of Columbia*¹⁶ and *Pennsylvania Association of Retarded Children v. Commonwealth*,¹⁷ two landmark decisions establishing the constitutional right of handicapped children to a publicly funded education. These cases provided the catalyst for the development of comprehensive state and local educational programs for disabled children.¹⁸

Legislation enacted prior to EAHCA prohibits the discrimination of disabled persons in federally funded programs or activities.¹⁹ The Re-

14. H.R. REP. NO. 332, 94th Cong., 1st Sess. 2 (1975). The lack of progress under earlier statutes greatly dissatisfied Congress. Evidence of this is shown in the House Report, which emphasized the problems of exclusion and misplacement of handicapped children. Senator Williams, one of the principal sponsors of EAHCA, urged the Act's passage, stating, "[W]hile much progress has been made in the past few years, we can take no solace in that progress until all handicapped children are, in fact, receiving an education." 121 Cong. Rec. 19,486 (1975).

15. 121 Cong. Rec. 19,502 (1975). Senator Javitz stated that "all too often, we have denied our handicapped citizens the opportunity to receive an adequate education." *Id.* at 19,494. Senator Cranston noted that millions of handicapped children are largely excluded from educational opportunities provided to other children and are denied access to public schools due to a lack of trained personnel. *Id.* at 19,502.

16. 348 F. Supp. 866 (D.D.C. 1972).

17. 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

18. Both cases are considered to be prominent contributions to Congress' enactment of EAHCA. In *PARC*, plaintiffs, retarded children, alleged that Pennsylvania's compulsory education statute, which excluded them from public education and training, violated the equal protection and due process clauses of the fourteenth amendment. The children were considered ineducable because they could not benefit from a public education. Although a consent decree resolved the case, the court enjoined the state from denying any mentally retarded child access to a free public program of education and training. 334 F. Supp. at 1258.

The *Mills* decision simply embodied what the parties had agreed to in *PARC* a year earlier. The court held that the state's denial of public education to handicapped children constituted a violation of due process. Thus, the state could not exclude handicapped children from public education unless it gave them an adequate and immediate alternative education, as well as due process protections. The decision applied to all children excluded from school because of mental, behavioral, emotional, or physical handicaps. 348 F. Supp. at 878.

Because the legislative reports discuss *PARC* and *Mills* at length, the EAHCA drafters were clearly guided by the principles these cases established. See Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176, 192-93 (1984).

19. See Pub. L. No. 93-112, 87 Stat. 355 (1973) (codified as amended at 29 U.S.C. § 701 (1978)). Section 504 specifically provides: "No otherwise qualified handicapped

habilitation Act requires federally funded educational agencies to provide handicapped children with an education in a regular classroom or to construct an appropriate program of free public education.²⁰ Section 504 of the Rehabilitation Act defines a handicapped individual as any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.²¹ Because virtually all states receive federal funds for educational purposes, most state educational agencies are subject to the Act.²²

Although both section 504 and EAHCA grant the federal government the authority to act for the protection of the handicapped, they differ in several respects. First, EAHCA defines handicapped children as those who require special education and related services because they are learning disabled, mentally retarded, emotionally disturbed, or have specified physical handicaps.²³ EAHCA provides federal funding to states that guarantee every handicapped student a "free appropriate public education" (FAPE)²⁴ by implementing its substantive and pro-

individual in the U.S. . . . shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. . . ." 29 U.S.C. § 794.

20. *Phipps v. New Hanover County Bd. of Educ.*, 551 F. Supp. 732 (E.D.N.C. 1982).

21. 29 U.S.C. § 706(6) (1973). See L. ROTHSTEIN, *supra* note 13, at 22.

22. The 1973 Act's predecessor sought to provide rehabilitation services for the purpose of employability. Section 504, added in 1973, extended the Act's applicability to other areas of life by prohibiting any discrimination by recipients of federal funds. L. ROTHSTEIN, *supra* note 13, at 80.

23. 20 U.S.C. § 1401 (1976) defines handicapped children as "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services."

24. The stated purpose of EAHCA is:

to assure that all handicapped children have available them . . . a free, appropriate public education which emphasizes special education and related services designated to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for education of all handicapped children, and to assess the effectiveness of efforts to handicapped children.

20 U.S.C. § 1414(c) (1976).

A free appropriate public education (FAPE) is defined as: "special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational

cedural requirements.²⁵ While section 504 applies to all federally funded programs, EAHCA only applies to states and their political subdivisions that receive federal grants for education.²⁶

By enacting EAHCA, Congress demonstrated a clear federal commitment to educating all handicapped children.²⁷ The Act's legislative history reveals that Congress, intending to guarantee more than just

agency, (C) include an appropriate . . . education in the State involved, and (D) are provided in conformity with the individualized education program." 20 U.S.C. § 1401(18) (1976). "Special education" means cost-free instruction which meets the unique needs of the child. 20 U.S.C. § 1401(16) (1976). "Related services" include transportation and other various support services enabling the child to benefit from special education. 20 U.S.C. § 1401(17) (1976).

25. The means by which a state must provide free appropriate public education are enumerated in the Act and its regulations. *See* 34 C.F.R. § 300 (1987). A state must: (a) identify, locate and evaluate all handicapped children in the state in need of special education, 20 U.S.C. § 1412(2)(c) (1976), 34 C.F.R. § 300.128(a)(1) (1987); (b) establish and implement a program of appropriate education in the least restrictive placement, 20 U.S.C. § 1415 (1976), 34 C.F.R. § 300.505-.556 (1987); (c) establish and implement a system of due process procedures within certain minimum guidelines to protect the rights of parents, 20 U.S.C. § 1415 (1976), 34 C.F.R. § 300.500-.514 (1987); (d) establish and implement a system of personnel development, 20 U.S.C. § 1413(a)(3) (1976), 34 C.F.R. § 300.380-.387 (1987); (e) provide an annual program plan describing these requirements, 20 U.S.C. § 1412-13 (1976), 34 C.F.R. § 300.110-.151 (1987).

For a discussion of the substantive and procedural rights, see L. ROTHSTEIN, *supra* note 13, at § 2.12.

26. *See generally* Schoenfeld, *Civil Rights for the Handicapped Under the Constitution and Section 504 of the Rehabilitation Act*, 49 U. CIN. L. REV. 580 (1980). The Rehabilitation Act became the first comprehensive federal law involving handicapped persons' rights. Section 504 applies only to programs that receive federal financial assistance and only to those states that elect to accept federal funding. The section applies to all state programs or activities that receive or benefit from federal assistance and all entities which receive funds indirectly through another recipient. Thus local school districts are also subject to its requirements. L. ROTHSTEIN, *supra* note 13, at 21.

27. 121 Cong. Rec. 19,485 (1975) (statement of Sen. Williams).

Congress found that the public school system excluded approximately eight million handicapped children in the United States and that more than half of all handicapped children received an inadequate education. Many children remained either completely excluded from any form of public education or virtually ignored in classrooms designed for their nonhandicapped peers. *Id.*

EAHCA requires states to extend educational services first to children denied education and then to those receiving an inadequate education. Upon examining the express statutory findings and priorities, coupled with the extensive procedural requirements and the definition of free appropriate public education, "the face of the statute evinces a congressional intent to bring previously excluded handicapped children into the public education systems of the states." *Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 189 (1982).

equal educational access for handicapped children, sought full educational opportunities through the cooperative efforts of all levels of government.²⁸ Congress found that by providing handicapped children with the education necessary to become productive citizens,²⁹ states would save the costs of placing the handicapped in state institutions. Because Congress recognized that handicapped children need special programs, EAHCA requires states to place them in programs suitable to their individual abilities.³⁰ These placement procedures, however, cause problems when educators try to discipline a handicapped stu-

28. 121 Cong. Rec. 19,478 (1975) (statement of Sen. Randolph). The increased awareness of the educational needs of handicapped children and the implications of *Mills* and *PARC* illustrate the need for expanded federal involvement if progress is desired in this area. *Id.*

29. 121 Cong. Rec. at 19,485 (1975) (statement of Sen. Williams). Congress has a duty to protect basic rights of handicapped children. By providing appropriate educational services, handicapped children can become contributing members of society. *Id.* at 19,494. Senator Humphrey stated that almost three million handicapped children, while in school, receive none of the special services they require to make education a meaningful experience. *Id.* at 19,504. See S. REP. NO. 168, 94th Cong., 1st Sess. 8-9 (1975). Society suffers when a handicapped child is deprived of educational opportunity. Public agencies and taxpayers will spend billions of dollars during handicapped individuals' lifetimes to maintain them. With proper educational services, many handicapped persons could become productive citizens who contribute to society. Others could increase their independence and reduce their societal dependence. Too often handicapped children are viewed as an extra burden because of the limited availability and high cost of private schooling. Such children are often confined to their homes or sent to institutions. 121 Cong. Rec. at 19,505. See *infra* notes 89-96 and accompanying text for a discussion of injuries suffered from loss of education. See also Comment, *Suspension and Expulsion of Handicapped Children: An Overview in Light of Doe v. Maher*, 14 W. ST. UNIV. L. REV. 341 (1986).

30. The minimal procedural safeguards a state or local educational agency is required to establish and maintain in order to receive federal funding are enumerated in § 1415 of EAHCA. The procedures include: (a) opportunity for the parents of handicapped children to examine all relevant records relating to the child's education and placement, § 1415(b)(1)(A); (b) written notice to the parents prior to a change in placement, § 1415(b)(1)(C); (c) an opportunity for parents to initiate an impartial due process hearing with respect to placement or evaluation, § 1415(b)(1)(E); (d) impartial review by state educational agency if the hearing is conducted by a local agency, § 1415(c); (e) parents who are dissatisfied with decisions or findings of state review may bring a civil action in federal district court, § 1415(e)(1)-(4).

EAHCA establishes procedural safeguards that guarantee parents both an opportunity for meaningful input into all decisions affecting their child's education and the right to seek review of any decision they deem inappropriate. *Honig v. Doe & Smith*, 108 S. Ct. 592 (1988). See also *Burger v. Murray County School Dist.*, 612 F. Supp. 434 (N.D. Ga. 1984) (handicapped child is guaranteed the right to have placement changes enacted pursuant to specified procedures).

The FAPE is tailored to the unique needs of the child through an individualized

dent, thus changing his program.³¹

III. ATTRIBUTES OF EAHCA

The main feature of EAHCA is the individualized educational program (IEP).³² The IEP is a comprehensive statement of the handicapped child's educational needs and goals and the specially designed instruction and related services to meet them.³³ The child's teacher, a school official qualified in special education, the parents or guardian, and the child himself help develop the IEP.³⁴ Congress emphasized

education program (IEP). See *infra* notes 41-48 for a discussion of EAHCA's procedural safeguards.

In its first interpretation of EAHCA, the Supreme Court held that EAHCA did not require the state to maximize each child's potential or to ensure that a handicapped child receive the best educational program. Board of Educ. of the Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982). The Court found that Congress enacted EAHCA to open public education to handicapped children on appropriate terms rather than to guarantee them any particular level of education. *Id.* at 192. Congress only intended EAHCA to provide free access to a "basic floor of opportunity" for each child. *Id.* The Court defined FAPE as being less than the best education possible but more than the same education for nonhandicapped students. *Id.*

See also Taylor By Holbrook v. Board of Educ., 649 F. Supp. 1253, 1258 (N.D.N.Y. 1986) (defendants under no obligation to place a student in the setting that will maximize his potential, although an obligation exists to ensure he receives, at minimum, an appropriate education).

31. See *infra* notes 52-55 and accompanying text for a discussion of school officials changing placement by suspension or expulsion.

32. Burlington School Community v. Massachusetts Dep't of Educ., 471 U.S. 359, 368 (1985). The IEP is a written document provided to handicapped children containing:

(A) a statement of the present levels of educational performance of such child; (B) a statement of annual goals, including short-term instructional objectives; (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs; (D) the projected date for initiation and anticipated duration of such services; and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.

20 U.S.C. § 1401 (1976).

See Tatro v. State of Texas, 703 F.2d 823 (5th Cir. 1983) (IEP described as educational blueprint specifying how to teach, set goals, and measure progress).

33. Burlington, 476 U.S. at 368. See Wegner, *Variations on a Theme — The Concept of Opportunity and Programing Decisions under the EAHCA of 1975*, 48 J. LAW & CONTEMP. PROBS. 169 (1985).

34. 20 U.S.C. § 1412(7) (1976). Local or regional educational agencies must review, and where appropriate revise, each child's IEP at least annually. 20 U.S.C. § 1414(a)(5) (1976).

the importance of parental participation in developing and assessing the IEP. Congress incorporated procedural safeguards to ensure parental input, including the right to seek review of any decisions the parents think are inappropriate.³⁵

A fundamental EAHCA provision states that handicapped students, to the greatest extent possible, must be educated with nonhandicapped students.³⁶ This concept of mainstreaming in the regular classroom is also known as placing the student in the least restrictive environment (LRE).³⁷ Exclusion from the regular classroom is the most restrictive

35. Because of the importance of parental participation in the IEP process, the regulations promulgated by the Department of Health and Human Services provide detailed assurances for the maximization of their involvement. See L. ROTHSTEIN, *supra* note 13, at § 2.16. Officials must give parents adequate notice to participate and must schedule meetings at mutually convenient times. 34 C.F.R. § 300.345(d) (1987). Parents are allowed to: examine all relevant records with respect to the identification, evaluation, and educational placement of the child; obtain an independent educational evaluation; receive notice of any decision to initiate or change the identification, evaluation or educational placement; present complaints with respect to the above; receive an impartial due process hearing. 20 U.S.C. § 1415(b) (1976).

36. 20 U.S.C. § 1412(5) (1976), 34 C.F.R. § 300.550-.556 (1987). See Comment, *The Education for All Handicapped Children Act: The Benefits and Burdens of Mainstreaming Capable Handicapped Children*, 38 MERCER L. REV. 903 (1987). Congress did not intend EAHCA to require placement of all handicapped children in regular classrooms, but to provide the necessary support services in the regular classroom. Mainstreaming allows handicapped children's concurrent education with nonhandicapped children. Congress recognized that regular classrooms would not always suit the educational needs of many handicapped children.

Section 1412(5) states, "The nature of severity of the handicap [may be] such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. EAHCA, therefore, provides for educating some handicapped children in separate classes or institutional settings." See 34 C.F.R. § 300.553 comment (1987) (handicapped children must receive nonacademic services in as integrated a setting as possible); 34 C.F.R. § 300.554 comment (1987) (each state educational agency must insure that each applicable state agency and institution implement the required education of handicapped children with nonhandicapped children); *Burger v. Murray County School Dist.*, 612 F. Supp. 434, 436 (N.D. Ga. 1984) (an important purpose behind EAHCA is to foster the education of handicapped children in environments where they will have the opportunity to learn alongside nonhandicapped children); Rothstein, *supra* note 2, at 349.

37. L. ROTHSTEIN, *supra* note 13, at § 2.15. Mainstreaming's ultimate goal is to move children into the mainstream of education, the regular classroom. See also Turnbull, *The Least Restrictive Environment for Handicapped Children: Who Really Wants It*, 16 FAM. L.Q. 161 (1982); Miller & Miller, *The Handicapped Child's Civil Rights as it Relates to the "Least Restrictive Environment" and Appropriate Mainstreaming*, 54 IND. L.J. 1 (1978).

To implement the right of a handicapped child to an education in the LRE, schools must provide a continuum of alternative placements. These alternatives include instruc-

educational placement.³⁸ The handicapped child should receive the placement that best enables him to meet IEP goals.³⁹ Mainstreaming seeks to avoid the stigma of exclusion from the regular classroom while providing the educational benefits of a nonhandicapped school situation.⁴⁰

EAHCA's regulations⁴¹ state that no regular public school may

tion in regular classes, special classes, private schools, the home, and other institutions. By providing a range of placements, EAHCA attempts to insure that each child receives an education responsive to his or her individual needs while maximizing the opportunity to learn with nonhandicapped peers. *Stuart v. Nappi*, 443 F. Supp. 1235, 1242 (D. Conn. 1978).

38. Turnbull, *supra* note 37, at 195. Because expulsion is the most harmful effect and most restrictive placement, it is not an option. *Id.* School officials often use expulsion as a means of removing offending students. This gives the student time to reflect on his behavior and punishes him by segregating him from his classmates. Comment, *supra* note 6, at 377.

39. 45 C.F.R. § 84.34 (1977). The LRE constitutes an attempt to protect handicapped children from harmful stereotypes. Turnbull, *supra* note 37, at 168.

40. The LRE promotes appropriate education by creating an impetus toward integration of handicapped children with "regular education" where their education is enhanced. Turnbull, *supra* note 37, at 169. Obvious advantages inhere to any child permitted to learn in a stable environment. This advantage may mean even more to the handicapped child. *Burger*, 612 F. Supp. at 437. See L. Rothstein, *supra* note 13, at § 2.15.

41. The Department of Health and Human Services (HHS) released detailed regulations to facilitate implementation of EAHCA and to provide clear-cut guidelines for many areas of special education. 34 C.F.R. § 300.1-.754 (1987). EAHCA's purpose is:

- (a) to insure that all handicapped children have available to them a free appropriate public education which includes special education and related services to meet their unique needs;
- (b) to insure that the rights of handicapped children and their parents are protected;
- (c) to assist States and localities to provide for the education of all handicapped children; and
- (d) to assess and insure the effectiveness of efforts to educate children.

34 C.F.R. § 300.1 (1987). Many of the procedural safeguards found in EAHCA's regulations are also found in the regulations which implement § 504 of the Rehabilitation Act. See 45 C.F.R. § 84 (1987); see also 34 C.F.R. §§ 300.500-.589 (1987). See *Doe v. Maher*, 793 F.2d 1470 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe and Smith*, 108 S. Ct. 592 (1988) (procedures ensure parental involvement in administrative process and enable parents to challenge agency actions they believe inappropriate or inadequate).

Handicapped children have the right to remain in their present placement until the resolution of any special education complaint. 34 C.F.R. § 300.513 (1987). During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. See *Tilton, By Richardo v. Jefferson County Bd. of Educ.*, 705 F.2d 800 (6th Cir. 1983) (proposed change in placement has been recognized as type of fundamental change triggering § 1415 requirements).

deny an education to a handicapped child capable of learning in that setting.⁴² As a response to self-contained special education programs,⁴³ the LRE principle prevents the exclusion of handicapped children from meaningful educational opportunities in a classroom with nonhandicapped students.⁴⁴ It allows placement in special classes or separate schools only if the nature of the child's handicap is such that schools cannot educate him satisfactorily in regular classes, even with the use of supplementary aids and services.⁴⁵

EAHCA and its regulations provide detailed due process procedures—encompassing identification, evaluation, placement, and change in placement—to ensure that all handicapped children receive appropriate education.⁴⁶ Although EAHCA does not explicitly address the

42. 34 C.F.R. § 300.554 comment (1987).

43. Turnbull, *supra* note 37, at 162.

44. See *Mills v. Board of Educ. of the Dist. of Columbia*, 348 F. Supp. 866 (D.C. Cir. 1972); *Pennsylvania Ass'n of Retarded Children v. Commonwealth*, 343 F. Supp. 279 (E.D. Pa. 1972). The *Mills* decision demonstrates the extent to which schools could use disciplinary measures to bar children from the classroom. School officials in *Mills* classified four of the seven plaintiffs as "behavioral problems" and excluded them from classes without providing any alternative education or notification to their parents. 348 F. Supp. at 869-70. The district court found that this practice, not limited to these plaintiffs, affected an estimated 12,000 to 18,000 disabled students. In light of these statistics, the court enjoined future exclusions, suspensions, or expulsions on disciplinary grounds. *Id.* at 880.

45. 20 U.S.C. § 1413(a)(4) (1976), 34 C.F.R. §§ 300.550 (1987). Despite the preference for mainstreaming handicapped children, Congress recognized that regular classrooms would not adequately serve the education of all handicapped children. 34 C.F.R. § 300.551 (1987) requires educational agencies to develop a "continuum of alternative placements." *Id.* The ultimate goal is to keep handicapped children in the regular classroom; they should only be moved into more restrictive placements if absolutely necessary. See also *Norris v. Massachusetts Dep't of Educ.*, 529 F. Supp. 759 (D. Mass. 1981); *Johnston v. Ann Arbor Pub. School*, 569 F. Supp. 1502 (E.D. Mich. 1983).

The education of nonhandicapped children is also a factor in determining the appropriateness of regular class placement. The presence of handicapped students might lessen the quality of the education offered to the other students by increasing the demands of the teacher. Note, *Enforcing the Right to an "Appropriate Education"*, 92 HARV. L. REV. 1103, 1123 (1979).

46. Rothstein, *supra* note 2, at 355. See also L. ROTHSTEIN, *supra* note 13, at § 2.23; 20 U.S.C. § 1412(5)(C) (1976); 34 C.F.R. § 300.530-.543 (1987). Many of EAHCA's due process procedures are similar to those required in *Mills*. EAHCA also confers to handicapped students an enforceable substantive right to public education in participating states. *Honig*, 108 S. Ct. at 614. Congress incorporated an elaborate set of "procedural safeguards" to ensure the full participation of the parents and the proper resolution of substantive disagreements. *Burlington School Community v. Massachusetts Dep't of Educ.*, 471 U.S. 359, 368 (1985). See 20 U.S.C. § 1415(b)(1)(C) (1976); 34

discipline of handicapped students,⁴⁷ section 1415 (e)(3), the "stay put" provision, prohibits state and local school authorities from unilaterally excluding disabled children from the classroom.⁴⁸ The section states that during the pendency of any proceedings initiated under EAHCA, the child shall remain in the current educational placement unless the parents or agency agrees to a change.⁴⁹ Thus, section 1415(e)(3) preserves the status quo pending resolution of administrative and judicial proceedings.⁵⁰

IV. CONFLICTS BETWEEN EAHCA AND DISCIPLINARY MEASURES

Conflicts arise between EAHCA procedures and school disciplinary systems.⁵¹ EAHCA prohibits disciplinary measures which effectively

C.F.R. § 300.504(a)(1),(2) (1987); L. ROTHSTEIN, *supra* note 13, at § 2.24 (on placement, identification, and evaluation).

47. *Doe v. Koger*, 480 F. Supp. 225, 228 (N.D. Ind. 1979). See Sindelar, *Suspensions and Expulsions of Handicapped Students: The Evolving Case Law*, 12 SCHOOL L. BULL. 1 (1981). Exclusion of handicapped children may violate certain substantive rights and procedural safeguards created by EAHCA and the Rehabilitation Act. The court in *Doe v. Maher*, 793 F.2d 1470 (9th Cir.), *aff'd. sub nom. Honig v. Doe and Smith*, 108 S. Ct. 592 (1988), agreed that EAHCA prohibits the expulsion of a handicapped student for misbehavior that is a manifestation of his handicap. This proscription, although nowhere directly stated in EAHCA, may be inferred from the Act's legislative history, purpose, terms, and accompanying regulations. *Id.* at 1481. See *S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981); *Kaelin v. Grubbs*, 682 F.2d 595 (6th Cir. 1982); *Doe v. Koger*, 480 F. Supp. 225 (N.D. Ind. 1979).

48. *Doe*, 480 F. Supp. at 228. In 20 U.S.C. § 1415 (1976), Congress set out the procedures by which schools receiving funds can change the placement of handicapped children. As HHS interpreted EAHCA, schools could not expel students whose handicap caused disruptive behavior. See *Stuart v. Nappi*, 443 F. Supp. 1235 (D. Conn. 1978). An expulsion not only changes a student's placement, but also restricts the availability of alternative placements. Expulsion may exclude a child from a placement that is appropriate for academic and social development. Thus, the use of expulsion proceedings for changing a disruptive handicapped child's placement contravenes the procedures of EAHCA. *Id.* at 1243.

See *Honig*, 108 S. Ct. at 604. As the legislative history demonstrates, Congress sought to remedy schools' unilateral exclusion of disabled children. Congress intended § 1415(e)(3) to prevent school officials from removing a child from the regular public school classroom over parental objections, pending completion of review proceedings. *Burlington*, 471 U.S. at 369.

49. 20 U.S.C. § 1415(e)(3) (1976).

50. *Doe v. Brookline School Community*, 722 F.2d 910, 915 (1st Cir. 1983).

51. Although EAHCA does not specifically address expulsions and suspensions, it does establish certain procedures for changing a child's placement. A school would

change a child's placement.⁵² Difficulties arise when educators remove disruptive handicapped children from their current course of study. IEPs cannot be altered without following EAHCA's placement procedures.⁵³ If the suspension is longer than a few days, it constitutes an unlawful change in the child's placement.⁵⁴ When parents and school officials decide not to design a new IEP, they must proceed with a due

contravene these procedures if it expelled or indefinitely suspended a handicapped child as a disciplinary measure. Schools may not deprive a handicapped child of an appropriate education as a result of handicap-related conduct. Further, schools must change a placement through EAHCA's procedural mechanisms. A disabled student may invoke EAHCA's protections in an expulsion proceeding. Change in placement proceedings include evaluation by a specialized team, written notice to the child's parents, opportunity to present complaints to the school board, the right to a hearing, and an appeal of the decision. See Schoof, *The Application of P.L. 94-142 to the Suspension and Expulsion of Handicapped Children*, 24 ARIZ. L. REV. 685, 693 (1982).

Expulsion procedures for regular students do not impose these requirements and therefore do not apply to handicapped children. Rothstein, *supra* note 2, at 350. There are two types of discipline. One, primarily in the classroom, is within the teacher's discretion. The other, imposed by administrators, involves suspensions and expulsions. *Id.*

52. See, e.g., Honig v. Doe & Smith, 108 S. Ct. 592 (1988); Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978); Kaelin v. Grubbs, 682 F.2d 595 (6th Cir. 1982); S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981); Sherry v. New York State Educ. Dep't, 479 F. Supp. 1328 (W.D.N.Y. 1979); Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979).

53. Comment, *supra* note 6, at 369.

54. *Id.* at 395-97. See Sherry, 479 F. Supp. at 1337 (indefinite suspension constitutes a significant change in the student's educational placement within the meaning of § 1415); Stuart, 443 F. Supp. at 1242-43. In Stuart, plaintiff, a handicapped child within the meaning of EAHCA, argued that suspension and expulsion from her high school denied her the right to an adequate public education. The court found that expulsion prior to resolution of her special education complaint would violate § 1415(e)(3). The right to remain in her current placement, however, directly conflicted with her high school's disciplinary process. An expulsion during the pendency of her special education complaint would constitute a change in placement in contravention of § 1415(e)(3). *Id.* at 1239-41.

See S-1 v. Turlington, 635 F.2d 342, 348 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981) (termination of educational services, occasioned by an expulsion, is a change in educational placement that invokes EAHCA's procedural protections); Sherry, 479 F. Supp. at 1337 (EAHCA's regulations do not permit ignoring the procedural protections of § 1415 when a temporary, emergency response to a handicapped student's behavior becomes a change in placement); Kaelin, 682 F.2d at 601 (expulsion from school is a change in placement under EAHCA).

One must determine what action constitutes a change in placement because notice is required upon such change. Sherry, 479 F. Supp. at 1337. See Concerned Parents & Citizens v. Board of Educ., 629 F.2d 751, 755 (2d Cir. 1980) (requiring notice for minor changes would prove too cumbersome). Tilton, By Richards v. Jefferson County Bd. of Educ., 705 F.2d 800 (6th Cir. 1983) (minor discretionary changes or transfers to differ-

process hearing to determine whether misconduct has occurred and whether the misconduct was the result of the handicap.⁵⁵

Courts note that because Congress specifically included emotionally disturbed children within EAHCA's definition of handicapped children,⁵⁶ it must have intended to protect handicap-related misbehavior.⁵⁷ When a handicapped child is involved, schools may not attempt expulsion until a specialized team determines the appropriateness of the child's placement under EAHCA guidelines.⁵⁸ While courts are aware of school officials' need to retain authority and discretion, they will not allow schools to hinder a disruptive handicapped child's access to education.⁵⁹

In *Honig v. Doe and Smith*,⁶⁰ the Supreme Court held that neither state nor local school authorities could unilaterally exclude disabled children from the classroom for dangerous or disruptive conduct attributable to their handicap.⁶¹ The plaintiff, California's Superinten-

ent geographic area with basically the same program does not constitute change in placement).

55. L. ROTHSTEIN, *supra* note 13, at 60-61.

56. *See, e.g., Doe v. Maher*, 793 F.2d 1470, 1481 (1986); *see supra* note 23 for a definition of handicapped children.

57. 793 F.2d at 1480. The Court found that one method Congress employed to attack exclusionary practices was to include within the definition of "handicapped" those children with serious emotional disturbances. *Id.*

58. *See Doe v. Koger*, 480 F. Supp. 225, 229 (N.D. Ind. 1979). EAHCA requires schools to consider whether the child's handicap caused his propensity to disrupt, and the school must follow the procedures best suited to protect a handicapped child's rights under EAHCA. *Id.*

59. *Turlington*, 635 F.2d at 348. In *Turlington*, the court observed that "nothing in the [EAHCA], the regulations, or the legislative history suggests that Congress intended to remove from local school boards — who alone are accountable to the entire school community — their long-recognized authority and responsibility to ensure a safe school environment." *Id.* at 348 n.9. *See, e.g., Stuart v. Nappi*, 443 F. Supp. 1235 (D. Conn. 1978) (the parameters of a decision must be clear because school officials need to be vested with ample authority and discretion). *Jackson v. Franklin County School Bd.*, 765 F.2d 535, 538 (5th Cir. 1985) (public schools unquestionably retain their authority to remove any student, handicapped or otherwise, who disrupts the educational process or poses a threat to a safe environment). *Victoria L. v. District School Bd. of Lee County, Fla.*, 741 F.2d 369, 374 (11th Cir. 1984) (even those cases interpreting the Rehabilitation Act as expanding handicapped children's rights beyond those specifically granted by EAHCA have held that Congress did not intend to deprive local school boards of their traditional authority and responsibility to provide a safe school environment). *See supra* notes 41-48 and accompanying text for a discussion of procedural safeguards.

60. 108 S. Ct. 592 (1988).

61. *Id.* at 604. John Doe assaulted another student and kicked out a school win-

dent of Public Instruction, asked the Court to read a "dangerousness" exception into the "stay put" provision that would allow school officials to exclude dangerous and disruptive students from the classroom pending completion of review proceedings.⁶² The Court nullified the request, stressing Congress' intent to strip school officials of their former right to "self-help."⁶³ The Court further stated that section 1415(e)(3) creates a presumption in favor of the child's current education placement which school officials can overcome only by showing that the current placement is substantially likely to result in injury

dow. His school subsequently suspended him for five days. Thereafter, the school recommended his expulsion and notified Doe's mother on the last day of his suspension that the suspension would extend until the school district's placement committee completed his expulsion proceedings. Doe brought suit against local school officials and the state superintendent of public education seeking a temporary restraining order canceling the proceedings. *Id.* at 594.

Jack Smith, an emotionally disturbed child who experienced academic and social difficulties, received a five-day suspension for stealing, extorting money from fellow students, and making sexual comments to female classmates. The principal recommended exclusion from the school district and extended Smith's suspension indefinitely pending a final disposition of the matter. Smith returned to his program after his attorney protested the school's actions and intervened in Doe's action. *Id.*

The school district had commenced expulsion proceedings pursuant to the California Education Code, which permitted indefinite suspensions during the pendency of the hearing. *Id.* The district judge issued a preliminary injunction ordering the school to return Doe to his then current educational placement pending completion of the IEP review process. Doe returned to school 24 school days after his initial suspension. The district court entered summary judgment in favor of the students, finding the proposed expulsions and indefinite suspensions for conduct attributable to the students' handicap in violation of EAHCA's mandate for a free appropriate public education. *Id.* at 599.

The Ninth Circuit affirmed the orders with slight modifications, holding that an indefinite suspension constituted a change in placement and that § 1415(e)(3), the "stay put" provision, did not have a dangerousness exception. *Doe v. Maher*, 793 F.2d 1470 (9th Cir. 1986). EAHCA therefore rendered invalid those sections of the California Education Code permitting indefinite suspensions or expulsions of handicapped students. The court found suspensions of up to 30 days were valid.

The Supreme Court affirmed the Ninth Circuit except for the 30-day suspension ruling. The Court held that school officials may temporarily suspend a handicapped child for up to 10 school days. *Honig*, 108 S. Ct. at 592. The Court stated that while Congress did not leave school administrators powerless, it did deny them their former right to "self help." *Id.* at 604. The Court, in declining to rewrite the statute, rejected the argument that Congress thought the residual authority of school officials to exclude dangerous students too obvious to include in the statute. *Id.* at 605.

62. *Id.* 20 U.S.C. § 1415(e)(3) (1976) clearly directs schools to keep a handicapped child in his current educational placement. The Court found that Congress directed schools to remove handicapped children only with the permission of the parents, or as a last resort, the permission of the courts. *Honig*, 108 S. Ct. at 604.

63. *Id.*

either to the handicapped child or others.⁶⁴ The Supreme Court balanced the students' interest in receiving a FAPE against the state and local school officials' interest in maintaining a safe learning environment.⁶⁵ The Court gave great weight to EAHCA's legislative history and found the direct omission of a "dangerousness" exception to be intentional.⁶⁶

Courts have found that expulsions and indefinite suspensions constitute a change in a child's placement.⁶⁷ In *Stuart v. Nappi*,⁶⁸ the United States District Court for the District of Connecticut found that expulsion would allow schools to circumvent the least restrictive environment (LRE) requirement.⁶⁹ Subsequent decisions have exhibited similar reasoning. For example, in *S-I v. Turlington*⁷⁰ the Fifth Circuit held that termination of educational services, occasioned by an expulsion, is a change in placement in violation of EAHCA.⁷¹ In *Sherry v. New York State Education Department*,⁷² the United States District

64. *Id.* at 606. If a child poses an immediate threat to other students or teachers, school officials may suspend him for up to 10 school days. This authority ensures others' safety and provides a cooling down period during which officials can initiate IEP review and seek to persuade the parents to an interim placement. *Id.* at 605.

65. *Id.*

66. *Id.* The Court carefully examined the two landmark decisions that guided Congress in drafting EAHCA, *Mills* and *PARC*. Although the injunction issued in *PARC* permitted school officials unilaterally to remove students in extraordinary circumstances, no such exception existed in *Mills*. The Court concluded that it could not create a statutory exception in place of Congress. *Id.*

67. See *supra* notes 45-51 and accompanying text.

68. 443 F. Supp. 1235 (D. Conn. 1978).

69. *Id.* at 1242. In *Stuart*, a high school student with serious academic and emotional disabilities sought to enjoin an expulsion hearing. The court found that the school had denied her the right to an appropriate public education and held that such a denial created a very real possibility of irreparable injury. The court further held that EAHCA's procedures had replaced expulsion as a means of removing handicapped children from school if they became disruptive. *Id.* at 1240-42. The court's concern is justified since an expulsion has the effect of changing a child's placement and also restricting the availability of alternative placements. *Id.* at 1242.

70. 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981).

71. *Id.* at 348. The court found that an expulsion denied nine mentally retarded students their rights under EAHCA and § 504 of the Rehabilitation Act. The students never received hearings to determine whether their misconduct constituted a manifestation of their handicap.

72. 479 F. Supp. 1328 (W.D.N.Y. 1979). The court enjoined the indefinite suspension of a self-abusive child, finding the suspension and alternative placement a significant change within the meaning of § 1415. Although EAHCA's regulations allow the use of normal state procedures where a child is a danger to herself, they do not permit

Court for the Western District of New York similarly concluded that school officials could not ignore EAHCA's procedural protections when they suspended indefinitely a handicapped student.⁷³ In *Doe v. Koger*,⁷⁴ the United States District Court for the Northern District of Indiana held that EAHCA required schools to place appropriately students whose handicaps caused their disruptiveness.⁷⁵ Instead of expelling a handicapped student, schools may change the student's placement from "regular/normal" to "restrictive/special" by modifying the IEP.⁷⁶

Courts have approved temporary disciplinary measures. In *Board of Education of the City of Peoria v. Illinois State Board of Education*,⁷⁷ the court held that a brief, temporary suspension did not constitute a termination of special education.⁷⁸ In *Peoria* the school intended the suspension to teach the student a lesson and to avoid repeat offenses.⁷⁹

school officials to ignore the procedural safeguards of § 1415 when the temporary, emergency response becomes a change in placement. *Id.* at 1337.

73. *Id.* The school claimed that it had the right to suspend plaintiff on an emergency basis because she presented a danger to herself. The court, however, found that the suspension had become one of indefinite duration and therefore constituted a significant change in placement. *Id.* at 1335-37. While the court did not question the school's motivation in protecting the plaintiff's safety, it held that the school's compliance could have alleviated or eliminated the danger by providing adequate supervision as part of her educational program. *Id.* at 1339.

74. 480 F. Supp. 225 (N.D. Ind. 1979).

75. *Id.* at 229. The court found that EAHCA's purpose is to provide handicapped children with placements that will guarantee their education despite their handicap. It is not EAHCA's purpose, however, to provide placement which will guarantee an education despite a child's will to cause trouble. *Id.* See *Doe v. Maher*, 793 F.2d 1470, 1481 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988) (EAHCA prohibits expulsion of a handicapped student for misbehavior that is manifestation of his handicap, and one may infer this proscription from EAHCA's history, purpose, terms, and accompanying regulation); *Stuart v. Nappi*, 443 F. Supp. 1235 (D. Conn. 1978); *Kaelin v. Grubbs*, 682 F.2d 595, 602 (6th Cir. 1982); *S-1 v. Turlington*, 635 F.2d 342, 348 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981); *Doe v. Koger*, 480 F. Supp. 225, 228 (N.D. Ind. 1979).

76. Turnbull, *supra* note 37, at 195.

77. 531 F. Supp. 148 (C.D. Ill. 1982).

78. *Id.* at 150. The court stated that the five-day suspension constituted a disciplinary interruption from school.

79. *Id.* The school suspended the 17-year-old learning-disabled student for gross misconduct and verbal abuse of his teacher. The court stated that no social or other value existed in finding the student's outburst due to inadequate placement or the fault of someone other than the offending student. The student "desperately needed to be brought up short for saying what he did to his teacher." *Id.*

The court noted that the disciplinary and educational value of suspensions outweighed the harm of a brief interruption from school.⁸⁰ The court found a short absence is not a change in placement or a termination of educational services.⁸¹ *Peoria* illustrates the belief that handicapped children will benefit more from learning in regular classrooms, even subject to short-term suspensions, than in more restrictive environments.⁸² This position is supported in *Honig*, where the Supreme Court held that EAHCA's regulations allow schools to use their normal procedures so long as they do not result in a change in a handicapped child's placement. Thus, the Court allowed temporary suspensions up to ten school days and interim placements for disabled children who pose an immediate threat to other students' safety.⁸³ A temporary emergency response to a handicapped child's behavior becomes a change in placement only when schools ignore EAHCA's procedural safeguards.⁸⁴

V. OPPONENTS OF SUSPENSION AND EXPULSION

Handicapped children and their parents oppose suspension and expulsion because of the resulting loss of education and socialization. As the Supreme Court has stated, the loss of more than ten school days is a significant deprivation which necessitates procedural due process protections.⁸⁵ A long-term suspension usually results in either a denial

80. *Id.* The court noted that "[a]ny theory that some harm of the brief interruption of classroom work could outweigh the educational value of the suspension here can only be recognized as pure imagination, or a feeble attempt at rationalization of a preconceived notion that handicapped students, whatever the degree of handicap, are free of classroom discipline." *Id.*

81. *Id.* at 151.

82. Comment, *supra* note 6, at 387.

83. *Honig v. Doe & Smith*, 108 S. Ct. 592, 605 (1988).

84. *Id.* at 613. See Kenny, *Education of All the Handicapped*, 12 URB. LAW. 505, 507 (1980). EAHCA does not prohibit all expulsions of handicapped children. See Note, *Enforcing the Right to an "Appropriate" Education*, 92 HARV. L. REV. 1103, 1122-23 (1979). Decisionmakers must carefully distinguish between disruptive behavior by a handicapped child and disruption resulting from the reactions of other children in the presence of handicapped children who may react out of discomfort or prejudice. *Id.*

85. *Goss v. Lopez*, 419 U.S. 565, 576 (1975). The Court stated that education is a property right protected by the due process clause, which prohibits expulsions because of misconduct without adherence to minimal due process procedures. Sustaining recorded suspension or expulsion charges could seriously damage the student's standing with his classmates and teachers, in addition to interfering with later opportunities for higher education and employment. Thus, schools must notify a student facing removal of the charges against him and afford him a hearing. *Id.*

of educational services or the placement of disabled students in home-based programs that are inadequate to meet their special needs.⁸⁶ Expulsions and indefinite suspensions similarly confine handicapped children to home-based services.⁸⁷ Opponents of expulsions and long-term suspensions argue that the exclusion of disabled children from school directly contravenes EAHCA's protection of the child's right to an education in the least restrictive environment.

In *Stuart v. Nappi*,⁸⁸ the court held that an expelled student would suffer inherent injury by the denial of an educational program.⁸⁹ In *Stuart* the plaintiff proved that the denial of any educational program from the time of her expulsion until the development of a new IEP would cause irreparable injuries.⁹⁰ The expulsion, the court believed, would preclude the child from taking part in special education programs offered by her school, thus hindering her social development.⁹¹ The court found that the student's restriction to homebound tutoring would merely perpetuate her social disability.⁹²

In *Hairston v. Drosick*,⁹³ the United States District Court for the Southern District of West Virginia found that the exclusion of handicapped children who could function in a regular classroom was a great disservice.⁹⁴ The court stated that a major goal of an educational program is the regular classroom socialization process that allows handicapped children to interact with their peers.⁹⁵ The court found it imperative that every handicapped child receive an education that provided him the maximum benefit of placement with his peers.⁹⁶

86. Sindelar, *supra* note 47, at 1.

87. *Id.* at 6.

88. 443 F. Supp. 1235 (D. Conn. 1979).

89. *Id.* at 1240.

90. *Id.* The court was concerned that some time may pass before the child would resume the special education to which she was entitled. *Id.*

91. *Id.*

92. *Id.* If the child suffered expulsion, private school or homebound tutoring would represent her only placement possibilities. However, there was the possibility that appropriate private placement would not be available.

93. 423 F. Supp. 180 (S.D. W. Va. 1976).

94. *Id.* at 183. The court stated that a child's chance in society lies in the educational process. *See supra* notes 27-29.

95. 423 F. Supp. at 183.

96. *Id.* Expert testimony established that placement of children in abnormal situations without their peers causes additional psychological and emotional problems that, combined with their existing handicaps, cause them greater difficulties later in life.

Opponents of suspension and expulsion also argue that excluding a handicapped child from an educational program is stigmatizing.⁹⁷ Exclusion, opponents contend, thwarts further intellectual development⁹⁸ and may cause permanent psychological and emotional damage.⁹⁹ Predictably, excluded handicapped children exhibit a lower level of achievement. Courts agree that exclusion from school greatly harms the handicapped child¹⁰⁰ and that school officials must make efforts to accommodate the special needs of a handicapped child within a regular classroom.¹⁰¹

VI. ADVOCATES OF SUSPENSION AND EXPULSION

Many school officials argue that suspension and expulsion are necessary to discipline misbehaving disabled children.¹⁰² They contend that there should not be a double standard for student conduct — handicapped students should not be allowed to commit disruptive acts with impunity while nonhandicapped students are punished for the same acts.¹⁰³ The dual disciplinary system, school officials argue, ultimately harms handicapped children¹⁰⁴ by leading them to believe their inappropriate behavior is excused by their emotional problems.¹⁰⁵ Therefore, school officials argue that handicapped children receive a false impression of society's expectations of them.¹⁰⁶

97. Note, *Legal Remedies for the Misclassification or Wrongful Placement of Educationally Handicapped Children*, 14 COLUM. J.L. & SOC. PROBS. 389, 425 (1979).

98. *Id.* at 426.

99. *Id.*

100. See also *S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981), cert. denied, 454 U.S. 1030 (1981) (expulsions deny education to those entitled under EAHCA).

101. Note, *Enforcing the Right to an "Appropriate Education"*, 92 HARV. L. REV. 1103, 1122 (1979).

102. Disciplinarians must provide a safe environment conducive to all students' learning. They consider suspensions not only a necessary tool to maintain order, but also a valuable educational device. School officials use suspensions to deal with frequent occurrences or those requiring immediate, effective action. *Goss v. Lopez*, 419 U.S. 565, 580 (1975).

103. *Kaelin v. Grubbs*, 682 F.2d 595, 601 (6th Cir. 1982). The *Kaelin* court disagreed with this contention and adopted the *Turlington* court's finding that handicapped children are not totally immunized from disciplinary action and can generally receive discipline in the same manner as their nonhandicapped peers.

104. See Appellants' Opening Brief, in 3 E.H.L.R. 551:360 (1979-80).

105. *Id.* at 551:361-62.

106. *Id.* at 551:362. Opponents of expulsion concede a dual system, but argue that the potential benefits of remaining in school justify differential treatment. They claim

Although courts permit schools temporarily to suspend disruptive handicapped students, many school officials still feel stripped of discretion and authority. School officials argue that invoking EAHCA's procedural safeguards for expulsions and not suspensions creates an artificial distinction.¹⁰⁷ In *Kaelin v. Grubbs*,¹⁰⁸ the Sixth Circuit rejected this argument, identifying two important policy reasons to justify the application of EAHCA's procedural protections to expulsions and not temporary suspensions.¹⁰⁹ First, the court noted that school officials still retain authority to control a handicapped child's violent or antisocial behavior.¹¹⁰ Thus, schools may suspend a student temporarily by adhering to the proper procedures.¹¹¹ Second, the court felt that the school's use of traditional expulsion procedures would eviscerate the crucial IEP concept.¹¹²

School officials also argue that unless the child is classified as emotionally disturbed, there is no relationship between the handicap and the behavior.¹¹³ Thus, a child's physical or mental impairment should not shield him from discipline administered to nonhandicapped children.¹¹⁴ Such generalizations, however, are contrary to Congress' em-

nonhandicapped children are less likely to suffer adverse effects when expelled. See Schoof, *supra* note 51, at 698.

107. *Kaelin v. Grubbs*, 682 F.2d 595, 602 (6th Cir. 1982).

108. 682 F.2d 595 (6th Cir. 1982).

109. *Id.* at 602. The court stated that following the procedures of 20 U.S.C. § 1415 (1976) preserves the individualized education planning for the handicapped child. 682 F.2d at 602.

110. *Id.*

111. *Id. Goss v. Lopez*, 419 U.S. 565 (1975), enumerated the procedural protections required for suspended students. The Court held, "[D]ue Process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story." *Id.* at 581. Notice and hearing should precede the student's removal. *Id.* at 581-82.

112. *Kaelin*, 682 F.2d at 602.

113. *S-1 v. Turlington*, 635 F.2d 342, 346 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981). The school agreed that a handicapped child should not be expelled for misconduct related to the handicap itself. However, they sought to limit application of this principle to students classified as "seriously emotionally disturbed." *Id.*

See, e.g., *Doe v. Maher*, 793 F.2d 1470, 1481 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988) (disruptive behavior is not a monopoly of the emotionally disturbed); *Sherry v. New York State Educ. Dep't*, 479 F. Supp. 1328 (W.D.N.Y. 1979).

114. Comment, *supra* note 6, at 383. Educators believe that they must treat an emotionally disturbed child differently from students whose behavioral problems are not based on emotional difficulties. While they feel that students with physical impair-

phasis on individual evaluation and programming.¹¹⁵ Furthermore, EAHCA does not allow schools to differentiate handicaps.¹¹⁶ Once a child is classified as handicapped and requires special education, he is entitled to all EAHCA procedural protections before a change in his program can occur.¹¹⁷ School officials argue that these protections effectively preclude them from using expulsion and suspension as disciplinary tools.¹¹⁸

Another EAHCA regulation states that separation and removal from regular education may occur only when the handicap is severe enough to make regular education impractical.¹¹⁹ The section's comment states that the school cannot meet the handicapped child's needs in a regular classroom when his disruptive behavior sufficiently impairs the education of others.¹²⁰ Consequently, schools argue that the inappropriateness of regular placement and the protection of the safety of others justifies the removal of a dangerous disabled child.¹²¹

Proponents of expulsion and suspension also argue that school systems lack the resources to serve highly disruptive or dangerous students.¹²² The *Mills*¹²³ court, however, held schools accountable to

ments should not escape the consequences of their unacceptable behavior, a student who does not have emotional handicaps should have normal behavior capability.

A psychologist's testimony at the preliminary injunction hearing, however, suggests that a connection between the misconduct and the children's handicap may have existed. A child with low intellectual functions and little control would respond to stress with abusive or aggressive behavior as a way of dealing with threats and feelings of vulnerability. *Turlington*, 635 F.2d at 347.

115. *Id.* at 346.

116. Comment, *supra* note 6, at 384.

117. *Id.*

118. See *Stuart v. Nappi*, 443 F. Supp. 1235, 1243 (D. Conn. 1978); *S-1 v. Turlington*, 635 F.2d 342, 348 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981).

119. 34 C.F.R. 300 (1987).

120. *Id.* See also *Schoof*, *supra* note 51, at 699.

121. See, e.g., *Jackson v. Franklin County School Bd.*, 765 F.2d 535 (5th Cir. 1985) (public schools unquestionably retain their authority to remove any student who disrupts the educational process or poses a threat to a safe environment); *Victoria L. v. District School Bd. of Lee County, Fla.*, 741 F.2d 369 (11th Cir. 1984) (school properly exercised traditional disciplinary authority); *S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981) (expulsion still proper disciplinary tool if used under proper circumstances).

122. *Sindelar*, *supra* note 47, at 3.

123. 348 F. Supp. 866 (D.D.C. 1972) (one of the cases providing the impetus for EAHCA). See *supra* notes 18, 44.

handicapped students despite a lack of funds.¹²⁴ The court found educating handicapped children to be more important than preserving a school's financial resources¹²⁵ and that schools have a duty to provide a comprehensive program to handicapped children regardless of cost.¹²⁶

Schools also point out the difficulty of determining whether behavior is handicap-related.¹²⁷ They contend that because the child's problems are emotional, social, and medical, rather than educational, other state agencies should provide treatment.¹²⁸ Usually, a child's educational, social, medical, and emotional needs are so intimately intertwined, however, that it is not realistic to separate them.¹²⁹

A comment to one of EAHCA's regulations addresses the conflict between the "stay put" provision and school's disciplinary procedures.¹³⁰ School officials rely on this comment, which states that while

124. *Id.* at 876.

125. *Id.* The *Mills* court stated that if sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom. The inadequacies of the system must not bear more heavily on the "exceptional" or handicapped child than on the normal child.

Id.

126. *Kenny, Education of All the Handicapped*, 12 URB. LAW. 505, 508 (1980). See *Sherry v. New York State Educ. Dep't*, 479 F. Supp. 1328 (W.D.N.Y. 1979). In *Sherry*, the plaintiff was a blind, deaf, and emotionally disturbed girl who required one-to-one supervision because of self-abusive behavior. The court held that EAHCA's regulations properly mandate that regardless of the severity of the handicap, the school must provide an appropriate education which must encompass, as a related aid and service, sufficient supervisory staff to meet the child's needs. *Id.* at 1339.

127. *Doe v. Maher*, 793 F.2d 1470, 1482-83 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988). The court, recognizing the difficulty in distinguishing between the two types of behavior, stated that by receiving federal funds a state assumes the burden. *Id.*

128. *North v. District of Columbia Bd. of Educ.*, 471 F. Supp. 136, 140 (D.D.C. 1979). The school believed parents should provide appropriate living arrangements, and if unable or unwilling to do so, the responsibility shifted to social services agencies, not the Board of Education. The school suggested that the child look toward alternate commitment schemes such as those enumerated in the D.C. Code relating to delinquent or neglected children, or for those in need of supervision. The court held that the educational authorities have the clear duty to place the child in a residential facility if necessary to provide an appropriate educational program. *Id.*

129. *Id.* The court noted the impossibility of performing the Solomon-like task of separating the child's needs. *Id.*

130. 20 U.S.C. § 1415(e)(3) (1976); 34 C.F.R. § 300.513 (1987).

school's cannot change a child's placement during a complaint proceeding, they may use their normal procedures concerning children who endanger themselves or others.¹³¹ Because schools' regular emergency procedures often include suspensions or expulsions, school officials suggest that EAHCA permits them to discipline a dangerous handicapped student.¹³² Thus, school officials suggest that section 1415(e)(3) permits suspensions and expulsions in emergencies.¹³³

Although EAHCA seeks to maintain a child's current educational placement, schools desire discretionary authority to change a handicapped student's placement when he endangers himself or others or threatens to disrupt a safe school environment.¹³⁴ In *Victoria L. by Carol A. v. District School Board*,¹³⁵ the Eleventh Circuit held that a student whose behavior had proved both unacceptable and dangerous had no absolute right to remain in high school pending an appeal of his

131. 34 C.F.R. § 300.513 comment (1987).

132. See, e.g., *Stuart v. Nappi*, 443 F. Supp. 1235, 1242 (D. Conn. 1978) (comment to § 1415(e)(3) suggests that the subsection prohibits disciplinary measures which effectively change a child's placement while permitting the type of procedures necessary for dealing with a student who appears dangerous); *Sherry v. New York State Educ. Dep't*, 479 F. Supp. 1328, 1336 (W.D.N.Y. 1979) (defendants argued the validity of suspending the child because suspension was the school's normal procedure for contending with a self-endangering child).

Courts have accepted this reasoning for temporary suspensions that do not constitute changes in placement. However, courts have relied on 34 C.F.R. § 300.552 comment (1987), which notes the inappropriateness of regular placement for a child who is so disruptive that he impairs the education of others and who has needs that cannot be met in that environment. The comment states that it sought to clarify that schools are permitted to use their regular procedures for dealing with emergencies. The appropriate response to a child's dangerous behavior, however, is to place him in a more restrictive environment rather than long-term suspension or expulsion. The *Stuart* court held suspensions up to 10 school days adequate for addressing emergency situations. 443 F. Supp. at 1243.

133. The comment to 34 C.F.R. § 300.513 (1987) states that schools may use their regular procedures for dealing with emergencies. Some commenters wanted a provision allowing change of placement for health and safety reasons, while others requested that the regulations not consider suspension a change in placement. HHS responded that § 1415(e)(3) would not prevent a public agency from using its regular procedures for dealing with emergencies. *Stuart*, 443 F. Supp. at 1242 n.5.

134. *Jackson v. Franklin County School Bd.*, 765 F.2d 535, 538 (5th Cir. 1985). Courts have held that § 1415(e)(3) does not prohibit a court from modifying a handicapped child's placement during an IEP appeal. *Id.* See also *S-1 v. Turlington*, 635 F.2d 342 (5th Cir. 1981), cert. denied, 454 U.S. 1030 (1981) (local school board retains authority to remove handicapped child upon a proper finding that he is endangering himself or others).

135. 741 F.2d 369 (11th Cir. 1984).

placement.¹³⁶ In reaching this conclusion, the court noted that Congress did not intend to deprive local school boards of their traditional authority to ensure a safe school environment.¹³⁷ Schools argue that such dangerous behavior justifies indefinite suspensions without resort to EAHCA's complex procedures.¹³⁸

Courts have found, however, that expulsion and suspension are proper disciplinary tools under EAHCA when schools follow proper procedures.¹³⁹ Before an expulsion can occur, a qualified group of individuals must evaluate alternative placements and the child's individual needs.¹⁴⁰ Expulsion is allowed if this group determines that the handicap and the misconduct are unrelated.¹⁴¹

Courts have struck a delicate balance between the special educational needs of handicapped children and school officials' need to discipline disruptive students. However, courts will not allow schools to terminate educational services completely during an expulsion period.¹⁴² Schools may not subject handicapped children to a total cessation of educational services, even if their disruptive behavior is not handicap related. Thus, schools must adhere to the EAHCA's "stay put" provision, which requires that handicapped children remain in their current placements pending resolution of review proceedings.

136. *Id.* at 371. The school transferred a child with a special learning disability from her high school to a statutorily designated school for disruptive and disinterested students. *Id.* In addition to skipping classes and smoking, the child brought a razor blade and martial arts weapons to school and threatened to injure or kill another student. *Id.* at 371 n.1.

137. *Id.* at 374. The evidence proved that the student's behavior at the high school posed a threat to both students and school officials. The court held that the school had properly exercised the traditional disciplinary authority retained under EAHCA. *Id.*

138. See Schoof, *supra* note 51, at 699.

139. *Id.* at 700. See Honig v. Doe & Smith, 108 S. Ct. 592 (1988); Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978); S-1 v. Turlington, 635 F.2d 342 (5th Cir. 1981), *cert. denied*, 454 U.S. 1030 (1981); Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979); Sherry v. New York State Educ. Dep't, 479 F. Supp. 1328 (W.D.N.Y. 1979).

140. 20 U.S.C. § 1415(d) (1976). 34 C.F.R. § 300.533(a)(3) (1987) requires that specialized persons—those knowledgeable about the child, the meaning of evaluation data, and placement options—make placement decisions.

141. See *supra* notes 55, 84 and accompanying text for a discussion of handicap-related and handicap-unrelated misconduct.

142. *Turlington*, 635 F.2d at 348. See *infra* notes 77-84 for discussion of temporary suspensions.

VII. ALTERNATIVES

Handicapped children are not immune from all discipline. If the handicap is related to the disturbance, however, removal of the child from the educational system is inappropriate.¹⁴³ Expulsion is available to the school once it approves the handicapped child's placement and determines that his misbehavior did not result from the handicap.¹⁴⁴ If discipline problems are anticipated at the IEP stage, the IEP should include an appropriate disciplinary measure.¹⁴⁵ Rather than expelling a handicapped child, the school may transfer the student to an appropriate, more restrictive environment or utilize other measures.¹⁴⁶

The *Doe* and *Stuart* courts indicate that appropriate placement would minimize a student's disruptive behavior.¹⁴⁷ Thus, when a disabled student is disruptive, school officials must reevaluate his placement. In doing so, schools may transfer students between classes or schools in the hope that a new environment will prompt more acceptable behavior.¹⁴⁸ Such transfers do not require a "change of placement" hearing because they allow students to receive similar instruction in a program with the same degree of restrictiveness.¹⁴⁹ Schools may also subject less disruptive handicapped students to disciplinary methods such as detention, restriction of privileges or extracurricular activities, isolated study carrels, or time away from the classroom without permanently removing them from a regular classroom or changing the IEP.¹⁵⁰ These measures are part of the normal procedures that

143. See *supra* notes 87-96 and accompanying text for a discussion of mainstreaming and the harm of expulsions.

144. See *supra* notes 139-41 and accompanying text for a discussion of the use of expulsion.

145. L. ROTHSTEIN, *supra* note 13, at 62.

146. *Honig*, 108 S. Ct. at 618. See *supra* notes 37-45 and accompanying text for a discussion of the least restrictive environment principle.

147. *Doe v. Koger*, 480 F. Supp. 225 (N.D. Ind. 1979); *Stuart v. Nappi*, 443 F. Supp. 1235 (D. Conn. 1978).

148. Comment, *supra* note 6, at 385. Schools may transfer students for administrative reasons, such as moving mobility-impaired students to a new, more accessible building. Such transfers do not constitute a change in placement if the child would receive similar instruction in a program neither more nor less restrictive than the one he or she left.

149. See *Doe v. Maher*, 793 F.2d 1470, 1487 (9th Cir. 1986), *aff'd sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988) (all minor changes in program or services are not changes in placement unless *significant*).

149. *Id.*

150. *Honig*, 108 S. Ct. at 618.

EAHCA's regulations suggest.

School officials may freely employ reasonable disciplinary measures that neither deprive a student of an appropriate public education nor change his placement.¹⁵¹ The *Doe* court found that two- and five-day suspensions met both these criteria.¹⁵² The court stated that EAHCA does not provide any bright-line criteria for determining when a disciplinary measure becomes a change in placement; thus, schools may exercise sound disciplinary judgment.¹⁵³ A short, fixed, temporary suspension gives school officials time to develop strategies for coping with the child during the pendency of an ensuing review proceeding and to persuade the child's parents to agree to an interim placement.¹⁵⁴ Furthermore, suspensions of less than ten days do not rise to the level of changes in placement within the meaning of EAHCA.¹⁵⁵ Fixed-term suspensions set deadlines for returning disruptive handicapped students to school, thereby creating an incentive for resolving disputes.¹⁵⁶ School officials may abuse this practice by invoking a string of "interim suspensions" to forestall a student's right to a formal hearing, to avoid the legal repercussions of long-term suspensions, and to exclude the handicapped child from school.¹⁵⁷ Frequent short-term suspensions, however, constitute a constructive change in placement and an exclusion or denial of benefits.¹⁵⁸

Although school officials contend that they are now helpless in disciplining handicapped students, they can make program changes that do not constitute a change in placement. Moreover, school officials may seek judicial relief if existing procedures prove inadequate to cope with dangerous circumstances and the parents refuse to a change in placement.¹⁵⁹ Schools must complete all administrative proceedings before

151. 793 F.2d at 1484.

152. *Id.* The court held that such suspensions did not exhaust all permissible types of disciplinary measures. Informal, reasonable, and less substantial disciplinary measures that school officials have traditionally used to maintain order are similarly inoffensive under EAHCA. *Id.*

153. *Id.*

154. *Id.* at 1485.

155. *Honig*, 108 S. Ct. at 605.

156. 793 F.2d at 1486.

157. Comment, *supra* note 6, at 382. See also Sindelar, *supra* note 47, at 7.

158. *Id.* See *Sherry v. New York State Educ. Dep't*, 479 F. Supp. 1328, 1337 (W.D.N.Y. 1979) (indefinitely suspending brain-damaged and self-abusive child significantly changed her situation, thereby changing her placement).

159. 20 U.S.C. § 1415(e)(2) (1976) gives school officials an opportunity to invoke

seeking judicial review. The only way to bypass the administrative process is to demonstrate its futility or inadequacy.¹⁶⁰ Section 1415(e)(3) does not limit the courts' equitable powers temporarily to enjoin a dangerous handicapped child from attending school.¹⁶¹ While courts recognize the need for IEP flexibility, they know that flexibility cannot become a tool for avoiding EAHCA's protection. Courts should prohibit informal expulsions such as indefinite suspensions,¹⁶² since such devices allow a school to circumvent the handicapped child's rights to an education in the LRE and exclude the child from a placement that is appropriate for his academic and social development.¹⁶³

A change in placement is an appropriate long-term method schools may adopt to handle handicapped children with severe disciplinary problems.¹⁶⁴ As the Ninth Circuit noted, it is difficult to distinguish between residual disciplinary authority and a change in placement.¹⁶⁵ A difference exists, however, between a provision authorizing a fixed-term suspension and one that authorizes school officials to suspend a student's education indefinitely.¹⁶⁶ School officials must weigh the disciplinary justification of exclusion¹⁶⁷ against the psychological detriment of segregation.¹⁶⁸

judicial aid. Any party aggrieved by the findings and decisions made under subsection (b) shall have the right to bring a civil action. Plaintiffs may sue in any state or district court without regard to the amount in controversy. *Id.*

160. *Honig*, 108 S. Ct. at 606.

161. *Id.*

162. *Doe v. Maher*, 793 F.2d 1470, 1491 (9th Cir. 1986), *aff'd. sub nom. Honig v. Doe & Smith*, 108 S. Ct. 592 (1988). For EAHCA's purposes, an indefinite suspension is the same as an expulsion. Comment, *supra* note 6, at 386. *See also Doe v. Koger*, 480 F. Supp. 225, 228-29 (N.D. Ind. 1979). EAHCA limits schools' suspension of a handicapped child to the time it takes to place him in the appropriate, more restrictive environment.

163. *Stuart v. Nappi*, 443 F. Supp. 1235, 1243 (D. Conn. 1978). The result of exclusion from the regular classroom "flies in the face of the explicit mandate of [EAHCA,] which requires that all placement decisions be made in conformity with a child's right to an education in the [LRE]." *Id.*

164. *See supra* notes 93-95, 146-49 and accompanying text for a discussion of transferring handicapped children.

165. 793 F.2d at 1486.

166. *Id.* Congress did not intend school officials to avoid EAHCA's "stay put" provision by unilaterally determining that a child should be suspended indefinitely because he is dangerous. *Id.*

167. *See supra* notes 102-12, 134-38 and accompanying text.

168. *See supra* notes 85-100 and accompanying text.

VIII. CONCLUSION

EAHCA's procedural safeguards are not blindly protectionist, nor do they require schools to tolerate behavior in disabled students that they would not tolerate from nonhandicapped students.¹⁶⁹ The Supreme Court, while cognizant of school officials' need for authority and discretion, has merely limited that authority.¹⁷⁰ Disabled children are neither immune from a school's disciplinary process nor entitled to participate in programs when their behavior impairs the education and safety of others.

Limiting school officials' disciplinary authority will result in less discrimination against the handicapped. Although schools believe EAHCA deprives them of their traditional disciplinary authority, alternatives do exist. EAHCA affords schools both short-term and long-term methods for dealing with disruptive handicapped children. School officials can take swift disciplinary measures such as suspensions of up to ten school days. They can also request a change in placement for handicapped students who, by disrupting the education of other children in the class, have demonstrated that their current placement is inappropriate. Therefore, school officials' limited disciplinary authority is in the disabled child's best interest and ensures that he receives an appropriate education.

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169. Comment, *supra* note 6, at 379.

170. Honig v. Doe & Smith, 108 S. Ct. 592 (1988).

* J.D. 1989, Washington University.

