Statement of
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Costa Mesa, California
for the Record of the
Committee on Health, Education, Labor & Pensions
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Hearing on
IDEA Discipline
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My name is William M. Habermehl. I am the elected County Superintendent of Orange County California. We have approximately 505,000 students in Orange County and 48,500 special education students. The special education students range from learning disabled and mildly disabled to the severely disabled.

We are pleased that Congress is looking at ways to improve the delivery of educational services to special education students. The Individuals With Disabilities Education Act (IDEA) is in great need of reform. In 1975, when Congress passed the Education For All Handicapped Children Act, now the IDEA, children with disabilities were not being served by the public schools. This is no longer the case. The law mandates that all special education children be served by public schools and grants parents of disabled children procedural rights.

It is now time for Congress to review the IDEA and restore some balance to special education and the discipline of special education students.

The premise of my testimony is two-fold. First, all children, whether disabled or non-disabled, should be treated in the same manner under the law when their conduct is not the result or a manifestation of a child=s disability. Second, children learn by being responsible for the consequences of their behavior and if we insulate them from these consequences we do these children a great disservice.

The present system of discipline for special education students creates special privileges and exceptions for disabled students over and above the rights of non-disabled students. The present law unfairly exempts disabled students from state expulsion rules even when the conduct is not a result of their disability. The present language in the law enacted in 1997 requires school districts throughout this country to continue to provide educational services to disabled students even after they are expelled. The law does not require school district to continue to provide educational services to non-disabled students but leaves this to state law. In our opinion, the discipline of all students should be equal and should not be preempted by federal law.

In addition, the present system of discipline is so cumbersome that any disabled student or parent of a disabled student who can afford to hire an attorney can ensure that their child is not expelled or disciplined beyond 10 days of suspension.

The present system at 20 U.S.C. Section 1415(k) allows school personnel to place a child in an alternative educational setting up to 45 days if the child carries or possesses a weapon or knowingly possess or uses illegal drugs. However, if the child assaults a teacher or another student, school personnel cannot transfer a child beyond a ten day period without parental permission or a court order. However, there are a number of procedural hurdles school districts must overcome and an attorney representing a child can ensure that the child will return to their original program by challenging any of the following:

- $ The appropriateness of the alternative educational setting.
- $ The appropriateness of the manifestation determination review.
- $ The appropriateness of the child=s behavior intervention plan.

If the parents= attorney can show that the alternative educational placement does not offer each and every service in the same manner as the original placement or if the attorney can show that the manifestation determination did not meet all of the numerous requirements set forth in the law or if the behavior intervention plan did not completely analyze all of the child=s behavior, including the child=s latest behavior then the parents= attorney has a good chance of delaying the disciplinary process. At the end of the 45 day period, the child would return to the child=s original placement unless the parent or the state otherwise agree (i.e., a hearing officer=s decision or a court order.)

The manifestation determination requires that school district personnel review all relevant information relating to the child=s disability and then determine the following:

- $ Whether the child=s IEP and placement were appropriate and the special education services, supplementary services and behavior intervention strategies were provided consistent with the child=s IEP and placement.

- $ Whether the child=s disability impaired the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action.

- $ Whether the child=s disability impaired the child=s ability to control the behavior subject to the disciplinary action.

If the parents= attorney retains a psychologist who disputes some of the findings of the school district=s psychologist, the process can be delayed beyond the 45 day period and the child returns to the original placement.

This process needs to be simplified and the school district needs to have the authority to place the child in an interim alternative placement for a longer period of time and if the child contests placement in the interim alternative placement, the child would remain in the interim alternative placement unless the parent obtains a hearing officer=s order that the interim alternative placement is detrimental or harmful to the child.

Another alternative would be to repeal 20 U.S.C. Section 1415(k) and restore state authority over discipline and thus restore a single disciplinary system for both regular and special education students. A second alternative would be to enact provisions which state that if, after a manifestation determination is made, it is determined that the child=s conduct was not a manifestation of the child=s disability, the child may be disciplined under state law in the same manner as non-disabled students. If the conduct is a manifestation of the child=s disability, then the child may be transferred to another placement through the IEP process. A third alternative would be to amend 20 U.S.C. section 1415(k) as to place the burden of proof on the parent to show that the interim alternative educational placement is harmful or detrimental to the child and thus, otherwise, the child would remain in that placement until the entire matter is resolved.

Thank you for the opportunity to present this testimony.