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The Dimming Light of the IDEA: The Need to Reevaluate the Definition of a Free Appropriate Public Education

By Sarah Lusk*

“[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”

—Chief Justice Earl Warren¹

Chief Justice Warren’s words are as relevant now as they were over a half-century ago. In 1975, Congress enacted the Education for All Handicapped Children Act to address the educational disparities facing disabled students.² However, the law did not go far enough and the education of millions of disabled students suffered.³ After numerous amendments to

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* Throughout this article you will notice that a small number of sources are heavily relied upon. The lack of data and scholarly articles is at the heart of the problem discussed in this paper.

1. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2. *See* Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773 (codified as amended at 20 U.S.C. §§ 1405-1406, 1415-1420 (2005)); *see also* U.S. DEP’T OF EDUC., OFFICE OF SPECIAL EDUC. & REHAB. SERVS., THIRTY-FIVE YEARS OF PROGRESS IN EDUCATING CHILDREN WITH DISABILITIES THROUGH IDEA (2010), <https://www2.ed.gov/about/offices/list/osers/idea35/history/idea-35-history.pdf>.

3. Individuals with Disabilities Education Act, Pub. L. No. 108-446, § 101, 118 Stat. 2647 (codified at 20 U.S.C § 1400(c)(2) (2010)).

address the law's deficiencies, today we have the Individuals with Disabilities Education Act ("IDEA").⁴ IDEA was established to ensure that students from ages three to twenty-one "have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living."⁵ Mainstreaming and integration are the main goals of IDEA, with Congress specifically finding that "disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy. . . ."⁶ Although a national infrastructure of support for children with disabilities has been established, there is a marked difference between what should be available to students under IDEA and the realities for disabled students in schools today.⁷

School districts still deny disabled students the opportunity of an education. For example, thirteen-year-old Diego had developmental delays and cognitive disabilities, but he never received special education services.⁸ Diego attended an overcrowded middle school.⁹ He felt confused in his classes and endured frequent bullying.¹⁰ A classmate teased Diego, called him stupid and the two students started a physical altercation.¹¹ Diego's teacher called the police.¹² The Police

4. See generally *id.*

5. 20 U.S.C. § 1400(d)(1)(A)).

6. *Id.* § 1400(c)(1)). The Act defines the term *child with a disability* as a child "with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance...orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services." *Id.* § 1401(3)(A)(i)-(ii) (2010)).

7. See *infra* Part III.

8. Yael Cannon, et al., *Special Education In Urban Schools: Ideas For A Changing Landscape: Article: A Solution Hiding In Plain Sight: Special Education And Better Outcomes For Students With Social, Emotional, And Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 420 (2013).

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

arrested Diego and handcuffed him in front of his classmates.¹³ This was a traumatizing and shaming experience for him.¹⁴ Diego ended up in a juvenile detention center where he was bullied.¹⁵ He could not understand the court process his attorney explained to him, and spent days in a cell.¹⁶ Diego received no mental health services to help him cope with his fear, confusion, and anxiety, and no educational services.¹⁷

Diego's story is common as students all over the country experience similar struggles.¹⁸ Students with disabilities are more likely than other students to be removed from the classroom and enter the "School-to-Prison Pipeline"—the prevalence of "policies and practices that push our nation's schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems. This pipeline reflects the prioritization of incarceration over education."¹⁹ Schools have become a significant feeder to the criminal justice system.²⁰ Concern about violence in schools and the prevalence of bullying stimulated "zero-tolerance" policies which led to dramatic increases in suspensions, expulsions, and arrests for common school-age children misbehavior.²¹ Suspended disabled students must attend an appropriate interim alternative education setting (IAES) placement, if they exist.²² If there is none, the students serve

13. *Id.*

14. Cannon, *supra* note 8, at 420.

15. *Id.*

16. *Id.*

17. *Id.*

18. *See infra* Part IV.

19. *Id.*

20. *Ending the School-to-Prison Pipeline: Hearing Before the Subcomm. on the Constitution, Civil Rights & Human Rights of the Senate Comm. on the Judiciary*, 112th Cong. 1-2 (2012) (statement of Sen. Richard J. Durbin, Chairman, Subcomm. on the Constitution, Civil Rights & Human Rights), <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg86166/pdf/CHRG-112shrg86166.pdf>.

21. *Id.* at 2; *see infra* Part III-IV.

22. TONY FABELLO ET AL., COUNCIL OF STATE GOV'TS JUSTICE CTR, *BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT* 4 (2011), http://csgjusticecenter.org/wpcontent/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

their suspension at home.²³ Only very limited research exists about the effects of IAES placements. Neither current school practices nor the law consider the negative repercussions these practices put into motion.²⁴ Schools would rather remove difficult children than educate them.²⁵

This paper has five parts. Part I examines Individuals with Disabilities Education Act (“IDEA”), explains the definition of a free appropriate public education (“FAPE”), and explores IDEA’s protections for special-education students facing school discipline. Part II discusses the Supreme Court’s interpretation of IDEA and FAPE, as well as how lower courts have interpreted IDEA. Part III focuses on how schools implement IDEA and treat special-education students. Part IV explores the disproportionate effects of school suspension on disabled students and explains the negative impacts, such as the Pipeline. Part V argues that Congress and the Supreme Court must reevaluate what constitutes FAPE. Additional comprehensive research is necessary to evaluate the effectiveness of IAES placements. The pervasive use of suspensions to deal with minor disruptions is counterproductive.²⁶ A strong education is the best way for disabled students to stay out of the Pipeline. Ineffective IAES placements compromise the goal of a full, fair and appropriate public education.

23. *Id.*

24. See *infra* Part III-IV; see generally CAMILLA LEHR, NAT’L CTR. ON SECONDARY EDUC. & TRANSITION, ALTERNATIVE SCHOOLS AND STUDENTS WITH DISABILITIES: IDENTIFYING AND UNDERSTANDING THE ISSUES, (Oct. 2004), http://www.ncset.org/publications/info/NCSETInfoBrief_3.6.pdf.

25. See Symposium, *What Happens to the “Bad Apples”: An Empirical Study of Suspensions in New York City Schools*, 87 NOTRE DAME L. REV. 2063 (2012) [hereinafter Symposium, *What Happens to the “Bad Apples”*]; Peter H. Shuck, *Banish the Bad Apples; Administrators of Public Schools and Public Housing Should be Given More Leeway to Punish Disruptive Behavior, for the Benefit of Everyone Involved*, AM. LAWYER, Oct. 2006 at 104 [hereinafter Shuck, *Banish the Bad Apples*].

26. This article does not advocate abolition of suspensions; sometimes suspensions are necessary for the safety and well-being of other students and school administrators.

I. Individuals with Disabilities Education Act

If a student is suspected of having a disability, IDEA provides that school districts evaluate the child using “a variety of assessment tools and strategies to gather relevant functional, development and academic information” to determine whether the student can be classified with a disability.²⁷ A student can be classified with any of eleven recognized disabilities.²⁸ IDEA mandates that each classified student receives a free appropriate public education (“FAPE”).²⁹ FAPE is defined as:

Special education and related services that have been provided at public expense, under public supervision and direction, and without charge; meet the standards of the State educational agency; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with the individualized education program required under section 1414(d) of this title.³⁰

Each classified child must have an individualized education program (“IEP”), a written education plan that the school district and parents develop, review periodically, and revise if necessary.³¹ IDEA also specifies procedural safeguards for

27. 20 U.S.C. § 1414(b)(2)(A)).

28. *Id.* § 1401(3)(A)(i)-(ii). These eleven classifications include, “intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, . . . orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and who, by reason thereof, needs special education and related services.” *Id.*

29. *Id.* § 1401(9)(A)-(D)).

30. *Id.* § 1401(9)(A)-(D)). *See also id.* § 1414(d)(1)-(7)).

31. *Id.* § 1414(d)(1)(A)(i). Testing results, evaluation results, and other information need to be included in each student’s IEP and analyzed by the IEP. The IEP must also include a statement of the child’s present levels of academic achievement and functional performance. The IEP Team consists of the child’s parents, a district representative, a school psychologist, a special education teacher, usually a regular education teacher, and an

disabled students to ensure their access to FAPE.³²

When a school suspends a student, IDEA provides protections.³³ When a disabled student misbehaves, their behavior falls into one of two categories, manifestation behavior or non-manifestation behavior.³⁴ Under IDEA, a student with a disability can only be suspended from school for ten school days each school year if the behavior that caused the suspension is a manifestation of the disability.³⁵ Manifestation means that the “conduct in question was caused by, or had a direct and substantial relationship to, the child’s disability; or . . . the conduct in question was the direct result of the local education agency’s failure to implement the IEP.”³⁶ The school must conduct a Manifestation Determination Review (“MDR”) “within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct”³⁷ The local educational agency, the parent, and relevant members of the IEP team must “review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine” if the student’s behavior was a manifestation of the child’s disability.³⁸ If the team determines that the child’s behavior was a manifestation of his or her disability, then there must be a “functional behavioral assessment” (FBA) and a “behavioral intervention plan” (BIP) must be added to the student’s IEP.³⁹ Removing a classified student from the classroom for more than ten days for disability behavior is a denial of FAPE.⁴⁰ If the behavior was

individual to interpret evaluations. The parents are entitled to bring whoever they want to the meeting. *Id.* § 1414(d)(1)(B)(i)-(vii).

32. *See id.* § 1415.

33. 20 U.S.C. § 1415(a)-(o); *see also* Cannon, *supra* note 8.

34. 20 U.S.C. § 1415(k)(1)(E).

35. *Id.* § 1415(k)(1)(B)).

36. *Id.* § 1415(k)(1)(E)(i)(I)-(II)).

37. *Id.*

38. *Id.*

39. *Id.* § 1415 (k)(1)(F)(i)).

40. 20 U.S.C. § 1415(k)(1)(B)). *See generally* Terry Jean Seligman, *Not as Simple as ABC: Disciplining Children with Disabilities Under the 1997 IDEA Amendments*, 42 ARIZ. L. REV. 77 (2000). An important caveat to the ten day rule for a manifestation suspension is that “[s]chool personnel may remove a student to an interim alternative education setting for not more

not related to the student's disability, then the disciplinary procedures are the same as a non-classified student.⁴¹ If school administrators find that the behavior was not a manifestation of the student's disability, then the school can impose any lawful punishment it desires.⁴²

When a classified student is suspended, IDEA requires the student be placed in an IAES.⁴³ The definition of an appropriate IAES is unclear.⁴⁴ "[A]n appropriate IAES will depend on the circumstances of each individual case. An IAES must be selected so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP."⁴⁵ An IAES can include a resource room, in-school suspension room, alternative classroom, mental health treatment facility, independent study program, charter

than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability" in cases dealing with weapons, drugs and serious bodily harm on school grounds. 20 U.S.C. § 1415(k)(1)(G)(i)-(iii)).

41. 20 U.S.C. § 1415(k)(1)(C)).

42. *Id.*

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subparagraph (E), the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities. . . .

Id.

43. *Id.* § 1415(k)(1)(B), (D)(i)-(ii), (2) ("The interim alternative educational setting . . . shall be determined by the IEP Team.").

44. See EILEEN AHEARN, NAT'L ASS'N OF STATE DIRS. OF SPECIAL EDUC., PROJECT FORUM, ALTERNATIVE SCHOOLS AND STUDENTS WITH DISABILITIES: CURRENT STATUS AND EMERGING ISSUES (May 2004), http://nasdse.org/DesktopModules/DNNspot-Store/ProductFiles/5_f3f85c20-ecbc-4343-b44d-3cb0dc892e2e.pdf; see also Lehr, *supra* note 24, at 2-3.

45. U.S. Dep't of Educ., *Q and A: Questions and Answers On Discipline Procedure*, IDEA.ED (June 2009) <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C,7>. See Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed. Reg. 46,540-01 (Aug. 14, 2006) (to be codified at 34 C.F.R. pt. 300, 301).

school, alternative education school and homebound placement.⁴⁶ An alternative education school provides “nontraditional education which is not categorized solely as regular education, special education, vocational education, gifted and talented or magnet school programs.”⁴⁷

States handle IAES placements differently. Twenty-six states require alternative school placements for expelled or suspended students; while other states simply send the students home.⁴⁸ Commentators describe IAES placement as a “holding tank” or “dumping ground.”⁴⁹ The Department of Education is collecting data on IAES placements but has not analyzed them or submitted a public report.⁵⁰ IDEA mandates IAES placements that provide services conforming to students’ IEPs. However, there are no studies of the effectiveness of IAES placements in reaching students’ IEP goals. There are no data that examine whether IAES placements provide FAPE. Answers to these questions are needed in order to ensure that students with disabilities are afforded FAPE at all times.

II. The *Rowley* Standard for Providing a FAPE

*Board of Education v. Rowley*⁵¹ discussed what a free and appropriate public education entails. The Court announced a

46. GEORGE G. BEAR, ET AL., NAT’L ASS’N OF SCH. PSYCHOLOGISTS, *IDEA ’97: INTERIM ALTERNATIVE EDUCATIONAL SETTINGS FOR CHILDREN WITH DISABILITIES*, http://familiestogetherinc.com/wpcontent/uploads/2011/08/IAES_book.pdf; see Regina M. Foley & Lan-Sze Pang, *Alternative Education Programs: Program and Student Characteristics*, 89 HIGH SCH. J. 10, 10 (2006); See Lehr, *supra* note 24, at 2-3.

47. See AHEARN, *supra* note 44.

48. FABELLO, *supra* note 22, at 4.

49. See e.g., David J. D’Agata, *Alternative Education Programs: A Return To “Separate But Equal?”*, 29 NOVA L. REV. 635, 635 (2005).

50. U.S. DEPT OF EDUC., OFFICE OF PLANNING, EVALUATION & POLICY DEV., N005 – CHILDREN WITH DISABILITIES (IDEA) REMOVAL TO INTERIM ALTERNATIVE EDUCATIONAL SETTING FILE SPECIFICATIONS (July 2010), <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCYQFjABahUKEwiotrDRspXIAhWIGz4KHxz2CoU&url=http%3A%2F%2Fwww2.ed.gov%2Fabout%2Finit%2Fed%2Fedfacts%2Fed%2Fnon-xml%2Fn005-6-1.doc&usg=AFQjCNF2ImXxrh6m8Kkres8i1JBmXN0ZQ&sig2=9FRHpfRcLARuv7JEiF0qA&cad=rja>.

51. See generally *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

two-prong test.⁵² First, the State must provide:

[P]ersonalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP⁵³

The second prong requires courts to determine whether the IEP is "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade."⁵⁴ Courts continue to struggle with what "benefit educationally" and "reasonably calculated" mean.⁵⁵

*Goss v. Lopez*⁵⁶ held that students have a right to notice and the opportunity to be heard when they are suspended.

Students facing temporary suspension have interests qualifying for protection of the Due Process Clause, and due process requires, in connection with a suspension of 10 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. The Clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.⁵⁷

52. *Id.* at 206-07.

53. *Id.* at 203.

54. *Id.* at 204.

55. Michele L. Beatty, *Not a Bad Idea: The Increasing Need to Clarify Free Appropriate Public Education Provisions Under the Individuals with Disabilities Education Act*, 46 SUFFOLK U. L. REV. 529, 537 (2013).

56. *Goss v. Lopez*, 419 U.S. 565 (1975).

57. *Id.* at 581.

The Court found that students have protected liberty and property interests in a public education, requiring minimal due process safeguards.⁵⁸ “[T]he total exclusion from the educational process for more than a trivial period . . . is a serious event in the life of the suspended child.”⁵⁹ The holding only applies to suspensions of fewer than ten days.⁶⁰ However, these protections, including the parent’s right to appeal, are only illusory unless the parents understand their children’s rights.⁶¹

58. *Id.* at 576. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to-- (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) the opportunity to present and resolve complaints, including-- (i) the time period in which to make a complaint; (ii) the opportunity for the agency to resolve the complaint; and (iii) the availability of mediation; (F) the child’s placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) due process hearings, including requirements for disclosure of evaluation results and recommendations; (J) State-level appeals (if applicable in that State); (K) civil actions, including the time period in which to file such actions; and (L) attorneys’ fees. 20 U.S.C. § 1415 (d)(2)(A)-(L)).

59. Goss, 419 U.S. at 576.

60. *Id.* at 584. Suspensions lasting longer than 10 days require additional due process protections.

61. 20 U.S.C. § 1415(d)(1)(A)(i)-(iii).

A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents only 1 time a year, except that a copy also shall be given to the parents-- (i) upon initial referral or parental request for evaluation; (ii) upon the first occurrence of the filing of a complaint under subsection (b)(6); and (iii) upon request by a parent.

Id. § 1415(d)(1)(A)(i)-(iii).

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner, available under this section and under regulations

*Honig v. Doe*⁶² examined whether school officials can suspend a classified student indefinitely. The Court held a suspension greater than ten days is a “change in placement” and a violation of FAPE.⁶³ Under 20 U.S.C § 1415(e)(3) school authorities cannot exclude classified students from school during the review proceedings to determine whether the student’s dangerous or disruptive conduct was a manifestation of their disability.⁶⁴ Moreover, the Court held that courts have the power to order a state to provide services if the local school could or would not.⁶⁵ The Court explained if parents and local education agencies cannot agree on a change of placement during the review proceeding for a disciplinary action, there is a presumption in favor of the child’s current educational placement.⁶⁶

In any such action, §1415(e)(3) “school officials can overcome [the presumption] only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others.”⁶⁷ The Court found that, under § 1415(e)(2), school officials are entitled to seek an alternative placement if the classified

promulgated by the Secretary relating to-- (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) the opportunity to present and resolve complaints, including-- (i) the time period in which to make a complaint; (ii) the opportunity for the agency to resolve the complaint; and (iii) the availability of mediation; (F) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) due process hearings, including requirements for disclosure of evaluation results and recommendations; (J) State-level appeals (if applicable in that State); (K) civil actions, including the time period in which to file such actions; and (L) attorneys' fees.

Id. § 1415(d)(2)(A)-(L)).

62. *Honig v. Doe*, 484 U.S. 305, 316 (1988).

63. *Id.* at 328-29.

64. *Id.* at 306.

65. *Id.* at 317.

66. *Id.* at 328.

67. *Id.*

student is dangerous.⁶⁸ The 1997 amendments to IDEA codified *Honig's* ruling.⁶⁹ Congress intended the amendments "to redress a long history of exclusion and misidentification of students with disabilities."⁷⁰ Federal and state courts still have difficulty upholding a child's right to FAPE.

A. *Interpretation of Rowley with respect to FAPE*

Rowley's holding left courts to guess what "reasonably calculated" and "meaningful benefit" mean. Courts have interpreted *Rowley's* terms in three ways; (1) the "meaningful benefit" standard, (2) the "some educational benefit" standard, and (3) the "mixed-educational-benefit" approach.⁷¹ The "meaningful benefit" standard is the majority approach.⁷² "Meaningful Benefit" gauges the student's potential and weighs it against the educational benefit received.⁷³ "Meaningful Benefit" intends, at the very least, to have a meaningful educational benefit for a child's self-sufficiency.⁷⁴ The ambiguity of *Rowley's* terms has resulted in varying approaches across the country.⁷⁵

Attempting to apply *Rowley's* vague language courts have often used the flexible language to find that persistent suspensions do not deny FAPE. For example, courts have ruled that parents have the burden to establish that the district failed to provide FAPE rather than have the school district prove it did.⁷⁶ This is inapposite of IDEA's protections that put the burden on the school district to provide FAPE to

68. *Honig*, 484 U.S. at 328.

69. Cannon, *supra* note 8, at 466-67.

70. *Id.* at 467.

71. Beatty, *supra* note 55, at 537-39.

72. *Id.* at 537-38.

73. *Id.* at 538 nn.64-65 (referring to the Sixth Circuit's analysis in *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 863-64 (6th Cir. 2004)).

74. *Deal v. Hamilton Cty. Bd. of Educ.*, 392 F.3d 840, 863-64 (6th Cir. 2004).

75. Beatty, *supra* note 55, at 537-39.

76. See *M.M. v. Special Sch. Dist. No. 1*, 512 F.3d 455 (8th Cir. 2008) (holding that the district court failed to apply recent court precedent, which held that the party seeking to enforce IDEA requirements bears the burden of persuasion, and that the school district does not have to show it complied with IDEA).

every classified student.⁷⁷ Instead, courts have created a favorable presumption that school's services do provide FAPE, thereby placing the burden on the plaintiff to rebut this presumption.⁷⁸ One court even upheld the presumption because the parent did not exhaust the administrative remedies that IDEA provides.⁷⁹ Another court found that delay in graduation is not a component of FAPE and does not present an emergency situation where exhausting administrative does not apply.⁸⁰ This points out the need for additional study about

77. 20 U.S.C. § 1401(9).

78. William N. Myhill, *No FAPE for Children with Disabilities in the Milwaukee Parental Choice Program: Time to Redefine a Free Appropriate Public Education*, 89 IOWA L. REV. 1051, 1059 (2004).

79. *See Ruecker v. Sommer*, 567 F. Supp. 2d 1276 (D. Or. 2008) (holding that the court lacked jurisdiction because plaintiff failed to exhaust his administrative remedies and that the relief plaintiff sought could be achieved through the administrative process); *see also Polera v. Bd. of Educ.*, 288 F.3d 478, 491 (2d Cir. 2002) ("Polera was required to exhaust her administrative remedies before bringing a claim in federal court. She admittedly failed to do so. Therefore, the District Court lack subject matter jurisdiction over her claims.").

80. *Coleman v. Newburgh Enlarged City Sch. Dist.*, 503 F.3d 198, 205-06 (2d Cir. 2007). In *Coleman*, a student was suspended for the remainder of the school year after he had an altercation with another student which required intervention by the Newburgh Police Department. *Id.* at 201. The conduct of the student was determined to not be a manifestation of his disability. *Id.* The Court held that Coleman's "emergency situation" argument was unpersuasive because graduating with his class was not necessary to prevent the deprivation of a right protected under the IDEA. *Id.* at 206. The court found that if it allowed:

[A] disabled student after an adverse manifestation determination, to bypass the IDEA's exhaustion requirement altogether because any administrative remedy, while the student was attending the IAES, would be insufficient to correct the 'harm' inflicted by missing out on such things as normal classroom time and extracurricular activities as the disabled student's regular school. Such a sweeping exception would undermine the IDEA's statutory mandate for exhaustion. . . . As a broader matter, we are not persuaded that a disabled child has a right, under the IDEA, to graduate on a date certain or from a particular educational institution -- specifically, the child's original school rather than an IAES. The IDEA's mandate is that all disabled children be given a 'free appropriate public education (citations omitted).' In fulfilling this mandate, there are no general time and manner requirements placed on the states other than those provided in the IDEA and

the threat of persistent suspension. Courts are proceeding with insufficient data causing them to submit insufficient rulings to determine whether the school districts' favorable presumption can be overcome by parents. Courts are adjudicating in the dark and the presumption is the only thing that directs them where to go.

B. Prolonged Bullying as a Denial of FAPE

It is not just direct school actions that violate *Rowley*. A school district must provide a safe learning environment for classified students as the court explained in *T.K. v. New York City Department of Education* decided in 2014.⁸¹

A disabled student is deprived of a FAPE when school personnel are deliberately indifferent to or fail to take reasonable steps to prevent bullying that substantially restricts a child with learning disabilities in her educational opportunities. The conduct does not need to be outrageous in order to be considered a deprivation of rights of a disabled student. It must, however, be sufficiently severe, persistent, or pervasive that it creates a hostile environment. . . . [E]vidence of past bullying and its impact on the disabled student's learning opportunities is important in determining whether an educational program is reasonably calculated to provide a disabled child with a FAPE."⁸²

In this case, the IEP team refused to consider whether bullying affected L.K.'s educational needs and behavior.⁸³ The *T.K.* court adhered to *Rowley*'s "reasonably calculated" language in a

created by the states.

Id. at 205-06.

81. *T.K. v. New York City Dep't of Educ.*, 32 F. Supp. 3d 405 (E.D.N.Y. 2014) (citation omitted).

82. *Id.* at 417-18.

83. *Id.* at 420-21.

way that gives the *Rowley* standard some teeth.⁸⁴ The holding sheds some light and provides another interpretation of what it means for an educational program to be reasonably calculated to provide FAPE. The school district's failure to prevent bullying denied L.K. FAPE.

III. Realities of Implementing IDEA and FAPE's Absence From School

A. Zero-Tolerance Policies and "Bad Apples"

"Zero-tolerance" policies have become widespread since the early 1990s owing to school violence, rising youth crime and the war on drugs.⁸⁵ Such policies allow educators to impose harsh, inflexible punishments for rule violations such as drugs, fighting, smoking and school disruption.⁸⁶ Schools have become regimented, high-security environments with students being removed for minor infractions.⁸⁷ Most suspensions are for "minor offenses such as insubordination, truancy or obscene language."⁸⁸ Zero tolerance policies promote overbroad "reliance on suspension and expulsions as a response to student misconduct."⁸⁹

Some proponents of zero tolerance and exclusionary policies believe that students who are chronically disruptive students prevent others from learning and are "bad apples," deserving removal from the classroom in order to protect the "good apples" educations.⁹⁰ "[S]ociety's highest priority must

84. *Id.* at 418.

85. Thalia Gonzalez, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 291 (2012).

86. Amy P. Meek, Note, *School Discipline "As Part of the Teaching Process": Alternative and Compensatory Education Required by the State's Interest in Keeping Children in School*, 28 YALE L. & POL'Y REV. 155, 158 (2009).

87. Gonzalez, *supra* note 85, at 291.

88. Meek, *supra* note 86, at 159.

89. Courtney Marie Rodriguez, Note, *Saving the Nation's Expendable Children: Amending State Education Laws to Encourage Keeping Students in School*, 51 FAM. CT. REV. 469, 470-71 (2013).

90. See Schuck, *Banish the Bad Apples*, *supra* note 25.

be to improve good apples' opportunities, even while attempting to address the problems of the bad ones. This may require removing the miscreants until they can be rehabilitated. . . ."⁹¹ However, these critics acknowledge that exclusion adversely affects classified students because they are not provided with the support they need to succeed academically or graduate from high school.⁹² Some proponents of the "bad apple" approach call for research and reform of the current disciplinary system, but do not have the data on which to base specific proposals.⁹³

B. School Suspension Rates for Disabled Students

One study examined millions of school and juvenile justice records in Texas "to improve policymakers' understanding of who is suspended and expelled from public secondary schools, and the impact of those removals on students' academic performance and juvenile justice system involvement."⁹⁴ Key

91. See Schuck, *Banish the Bad Apples*, *supra* note 25, at 104. Mr. Schuck explains that the procedural safeguards implemented by the IDEA have the "unanticipated effect of impeding the removal of bad apples, thereby blighting the educations of vast numbers of good-apple students." *Id.*

92. See Symposium, *What Happens to the "Bad Apples," supra* note 25, at 2064.

93. *Id.* The study had two objectives: (1) to understand the bad apples problem in the NYC public schools and how the schools use suspensions to "manage" the problem and (2) to find out what happens to students after they are suspended. *Id.* at 2074. The authors found that they could not complete their second objective because the data they collected could not answer questions "such as school resources required to suspend a student, the perceived relationship between teacher quality and classroom disruptions and suspensions, the subsequent career of suspended students, possible improvements in the suspension system, and the like." *Id.* The authors prepared a standardized interview protocol and reached out to a handful of principals, only a few of whom agreed to be interviewed. *Id.* at 2086. The N.Y.C. Department of Education institutional review board ("IRB") requested additional information from the authors before it would renew approval for this study. *Id.* The authors were still waiting on a response from the IRB in November 2011 when the author's published the article. *Id.*

94. FABELO, *supra* note 22, at ix. The purpose of this extensive study was "to inform state and local government officials, community leaders, and others vested in reducing student misconduct and juvenile crime while improving education environments—both within and outside Texas." *Id.* at 1. The analysis of data collected by researchers at the State of Texas Education Research Center ("ERC") at Texas A&M University occurred between

findings included that “six in ten public school students studied were suspended or expelled at least once between seventh and twelfth school years.”⁹⁵ Almost all removals were discretionary (97%), primarily in response to the schools’ conduct codes.⁹⁶ Only 3% of disciplinary actions involved conduct for which Texas state law mandates suspension.⁹⁷ This means that almost all suspension were discretionary and not for conduct which state law mandate the student be removed. In the wake of these policies, the study found that 10% of suspended students between seventh and twelfth grade dropped out and 31% of suspended students repeated their grade at least once.⁹⁸

The study included 928,940 students, of whom 122,250 (13.2%) were students with classified disabilities.⁹⁹ Almost 75% of classified students suffered at least one suspension.¹⁰⁰ Three out of four students with learning disabilities will be suspended at least once.¹⁰¹ Nine out of ten students classified with an emotional disturbance will be suspended at least once.¹⁰² “Approximately half . . . of the students coded as having an

January 2010 and March 2011. *Id.* at 25. The researchers collected data from over 1,200 school districts, 3,900 middle and high school campuses and of 928,940 students. *Id.* at 25-26. The researchers examined individual school records and school campus data for three groups of seventh-graders in 2000, 2001 and 2002. *Id.* at ix. Researchers then tracked these groups of seventh-graders over a minimum eight-year period. *Id.* at 28. The study period was six years, with the student’s sixth grade year and twelfth grade year considered as reference years to check for prior disciplinary events or a subsequent repetition of a grade. *Id.* at 28. Researchers were able to control for more than 80 variables which allowed them to see the impact of independent factors on the likelihood of a student being suspended and the relationship between these disciplinary actions and the student’s academic performance or juvenile justice involvement. *Id.* at ix. “Slightly more than half of . . . the students were male . . . 14 percent were African American, 40 percent Hispanic and 43 percent White/Non-Hispanic.” *Id.* at 28. “About 13 percent of the students were classified as receiving special education at any time during the tracking period, and 60 percent were classified as economically disadvantaged (as indicated by their eligibility for free or reduced-cost meals).” *Id.*

95. *Id.* at ix.

96. *Id.* at x.

97. *Id.*

98. *Id.* at xi.

99. *Id.* at 48.

100. FABELLO, *supra* note 22, at 48.

101. *Id.* at 50.

102. *Id.*

emotional disturbance were suspended or expelled eleven or more times.”¹⁰³ Simply having a classification is not as effective a predictor as the type of classification, such as the classifications of learning disability or emotional disturbance.¹⁰⁴ Only one in fifty suspension was for a violation that Texas law mandates suspension, 98.1% were discretionary.¹⁰⁵ Reflexive punitive policies disproportionately affect student with disabilities, particularly for students with emotional disabilities. Harsh, inflexible disciplinary policies around the country have led many scholars to call for reform of the punitive school environment that has developed.¹⁰⁶

C. Experiences in Interim Alternative Education Setting (IAES) Placements

Once a classified student receives a suspension, IDEA mandates an interim alternative education setting (“IAES”) placement that provides the student with their IEP services.¹⁰⁷ Twenty-six states mandate assignment to an alternative education setting for expelled or suspended students.¹⁰⁸ Placement is not always immediate, and the students must stay home until the district finds a placement.¹⁰⁹ Public schools often do not have sufficient financial resources to provide IAES placements for disabled students.¹¹⁰ For the alternative placements that do exist, there are few data on how

103. *Id.*

104. *Id.* at 52.

105. *Id.*

106. See JASON M. BIRD & SARAH BASSIN, NAT’L ASS’N OF SCH. PSYCHOLOGISTS, EXAMINING DISPROPORTIONATE REPRESENTATION IN SPECIAL EDUCATION 43 COMMUNIQUE 1, 16 (Oct. 2014); see also FABELLO, *supra* note 22, at 52.

107. 20 U.S.C. § 1415(k)(1)(B), (D)(i)-(ii), (2) (providing that “[t]he interim alternative educational setting . . . shall be determined by the IEP team.”).

108. Rodriguez, *supra* note 89, at 471.

109. *Id.* at 471 n.49. See Symposium, *What Happens to the “Bad Apples”*, *supra* note 25, at 2071 (“[S]tudents’ short-term placements . . . were primarily either in in-school suspension rooms or at home, but those student removed for more than ten days were primarily placed in alternative schools or homebound placements.”).

110. Meek, *supra* note 86, at 163.

effective these placements are for classified students.¹¹¹ From 1997 to 2001, the number of public alternative schools nearly tripled from approximately 3,850 to 10,900.¹¹² However, there appear to be no studies focusing on the quality of the educational experience in IAES placements. Some commentators suggest alternative school are not effective for classified students.¹¹³ An IAES must provide all the services, and modifications the student's IEP requires, and must address the behavior that led to the IAES placement.¹¹⁴ But there are no data available to show whether this is happening. IAES placements are temporary, lasting no more than 45 days, but that is no excuse to remain ignorant of whether they are working. The lack of data available asks more questions than provide answers.¹¹⁵ We are discussing millions of children being removed from the classroom for up to 45 school days, or nine weeks of instruction, however we have no idea if IAES placements are comporting with the law. That is inexcusable.

IV. IDEA and FAPE: Current Discipline Policies and the School-to-Prison Pipeline

Out-of-school suspensions are a primary predictor of whether a student will drop out before graduation.¹¹⁶

111. See Foley & Pang, *supra* note 46. Foley and Pang requested information from eighty-four program directors of principal of alternative programs in Illinois. *Id.* at 12. Fifty of those individuals returned their surveys. *Id.* The authors' "questionnaire was designed to identify the characteristics of alternative education programs including the administration of the program, student population, educational programs, school and community supports, educational faculty and staff, and administrators' experience and educational background." *Id.*

112. Bird & Bassin, *supra* note 106, at 16.

113. See Bird & Bassin, *supra* note 106.

114. See Camilla A. Lehr & Cheryl M. Lange, *Alternative Schools Serving Students With and Without Disabilities: What are the Current Issues and Challenges?*, 47 PREVENTING SCH. FAILURE 59, 62 (2003).

115. *Id.*

116. See e.g., Bird & Bassin, *supra* note 106; see also Am. Tonight Digital Team, *The School to Prison Pipeline: By the Numbers*, ALJAZEERA AM.: FLAGSHIP BLOG (Jan. 23, 2014, 3:00 PM) <http://america.aljazeera.com/watch/shows/america-tonight/america-tonight-blog/2014/1/23/school-to-prisonpipelineblackstudents.html> (citing multiple studies).

Suspensions lead students to fail more courses, increase the number of unexcused absences and caused students to become disinterested with pursuing an education.¹¹⁷ In 2012, researchers followed more than 180,000 Florida students from ninth grade through high school and beyond.¹¹⁸ This study showed that a single suspension in the ninth grade decreased a student's chances of graduating by one-third.¹¹⁹ No sensible society can brush aside statics like these with such catastrophic effects.

Classified students represent 12 % of the student population in the United States, but they make up 19 % of students suspended. They are 25 % of the student population receiving multiple out-of-school suspensions, 19 % of expelled students, 23 % of students referred to law enforcement, and 23 % of students arrested in school.¹²⁰ Suspensions disproportionately affect classified students, severely damaging their chances for educational success. Suspension often leads to academic deterioration for students receiving no immediate educational alternative, student alienation, delinquency, crime and substance abuse.¹²¹ Classified students suffer overly punitive discipline far more often than their non-classified

117. Am. Tonight Digital Team, *supra* note 116.

118. *Id.* (citing ROBERT BALFANZ ET AL., NAT'L CONF. ON RACE AND GENDER DISPARITIES IN DISCIPLINE, SENT HOME AND PUT OFF-TRACK: THE ANTECEDENTS, DISPROPORTIONALITIES, AND CONSEQUENCES OF BEING SUSPENDED IN THE NINTH GRADE (Dec. 21, 2012), <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf>. The study followed first time 9th grade students in the 2000-01 school year. *Id.* The study followed the students during the 2005-06 school year for high school outcomes which was two year past the expect time of graduation and then follows them through the 2007-08 school year for post-secondary outcomes. *Id.* at 3. The study focused on high school graduation and dropout events and post-secondary enrollment. *Id.*

119. BALFANZ, *supra* note 118.

120. U.S. DEPT OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE i (Jan. 2014), <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

121. See Am. Acad. of Pediatrics, *Policy Statement: Out-of-School Suspension and Expulsion*, 112 J. AM. ACAD. OF PEDIATRICS 1206 (2003), <http://pediatrics.aappublications.org/content/112/5/1206.full.pdf>.

peers.¹²² In a study examining data from over 26,000 middle and high schools, researchers estimated that well over two million students were suspended during the 2009-2010 school year.¹²³ One in five secondary school classified students was suspended, nearly three times the rate of unclassified students.¹²⁴ Society needs to address the negative effect of removal from the classroom on so many of our children.

Suspension increases the likelihood of falling into the School-to-Prison Pipeline (“Pipeline”). The Pipeline is a product of the policies and practices that exclude students from the classroom and push them into the juvenile and criminal justice system.¹²⁵ The American Civil Liberties Union (“ACLU”) has identified five “stops” students encounter along the Pipeline, including “failing public schools,” “zero-tolerance and other school discipline,” “policing school hallways,” “disciplinary alternative schools,” and “court involvement and juvenile detention.”¹²⁶ School suspensions play a role in four of

122. Deborah J. Vagins, et al., *Groundbreaking Senate Hearing Shines a Light on the School-to-Prison Pipeline*, ACLU (Dec. 11, 2012, 10:23 AM), <https://www.aclu.org/blog/criminal-law-reform-human-rights-racial-justice/groundbreaking-senate-hearing-shines-light> (citing Civil Rights Data Collection (March 2012)), <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-2012-data-summary.pdf>.

123. See U.S. DEPT OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE, Issue Brief No. 1 (March 2004), <http://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>; see also DANIEL J. LOSEN & TIA ELENA MARTINEZ, CENTER FOR CIVIL RIGHTS REMEDIES, OUT OF SCHOOL AND OFF TRACK: THE OVERUSE OF SUSPENSIONS IN AMERICAN MIDDLE AND HIGH SCHOOLS 1 (Apr. 8, 2013), http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf. The report contains data collected during the 2009-10 school year by a survey administered by the U.S. Department of Education’s Office of Civil Rights and made public in March 2012. *Id.* at 1. The data was gathered from 6,835 school districts, which covered approximately 85% of all students attending U.S. public school. *Id.* at app. B. Depending on the state, the sample included anywhere from 59% to 100% of students). *Id.*

124. *Id.* at 3.

125. Am. Civil Liberties Union, *What is the School-to-Prison Pipeline?*, ACLU (last visited Oct. 30, 2015), <https://www.aclu.org/racial-justice/school-prison-pipeline-fact-sheet-pdf>.

126. *Id.*

the five stops along the Pipeline.¹²⁷ Since the early 1990s, zero-tolerance policies have substantially increased the number of suspended student, rising to 3.1 million in 2000.¹²⁸ Students' journeys through school have become increasingly punitive and isolating.¹²⁹ Many students experience unqualified teachers, testing on material they never reviewed, repeated grades, placement in restrictive programs, repeated suspension and banishment to alternative placements.¹³⁰ Students experience all of this before being pushed out of school altogether.¹³¹

Since students with disabilities get suspended disproportionately frequently, their risks of falling into the Pipeline are even greater. The United States has the largest prison population in the world, at 2,217,000 people.¹³² The adult prison population and juvenile detention centers are full of individuals who did not complete high school.¹³³ An astounding three out of four minors sentenced to adult prisons have not completed the tenth grade.¹³⁴ Seven in ten children in the juvenile justice population suffer from learning disabilities, and 33% read below the fourth-grade level.¹³⁵ The single largest predictor of later arrest among adolescent females is having been suspended, expelled, or held back during the middle school years.¹³⁶ School suspension can have an extremely negative impact on students' lives and raises a student's risk of incarceration, which helps neither the student nor society.

V. Conclusion and Next Steps

127. School suspensions do not cause public schools to fail.

128. AM. CIV. LIBERTIES UNION, *supra* note 125.

129. *See infra* Part III.A.

130. Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 99 NEW DIRECTIONS FOR YOUTH DEV. 9, 11 (2003). http://media.wiley.com/product_data/excerpt/74/07879722/0787972274.pdf.

131. *Id.*

132. Inst. for Criminal Policy Research, *Highest to Lowest - Prison Population Total*, PRISON STUDIES (last visited Apr. 9, 2015), http://www.prisonstudies.org/highest-to-lowest/prison-population-total?field_region_taxonomy_tid=All.

133. Wald & Losen, *supra* note 130.

134. *Id.*

135. *Id.*

136. *Id.*

With the upward trend of suspension, “. . . student dropouts [will] make up about 82% of the adult prison population and 85% of juvenile justice cases.”¹³⁷ Classified students therefore are more likely to drop out or face exclusion from school due to harsh disciplinary practices. We cannot continue to be ignorant of these statistics. Denying FAPE not only affects the student and family, but it harms society as a whole. “Every young person who does not graduate from high school represents a financial loss to the public of \$209,000 over his or her lifetime.”¹³⁸ This number includes higher public health costs, higher public assistance costs, and higher criminal justice costs.¹³⁹ According to a recent study of the Vera Institute of Justice, for which forty states provided data, “[t]he full price of prisons to taxpayers . . . was \$39 billion, \$5.4 billion more than the states’ aggregate corrections department spending, which totaled \$33.5 billion.”¹⁴⁰ States on average spend \$31,286 on each prisoner annually.¹⁴¹ The country loses billions of dollars each year by denying students the right to a full, free and appropriate public education and allow them to be productive members of society. Denying students FAPE increases their chances of falling into an immensely costly and unproductive system.

The Department of Education knows that exclusionary school discipline practices disproportionately affect classified students.¹⁴² The Secretary has called for educators to actively redesign discipline policies to foster supportive and safe school environments.¹⁴³ The Secretary’s words do nothing to

137. Bird & Bassin, *supra* note 106.

138. VOICES OF YOUTH IN CHICAGO EDUC., FAILED POLICIES, BROKEN FUTURES: THE TRUE COST OF ZERO-TOLERANCE IN CHICAGO 22 (2011), http://www.otlcampaign.org/sites/default/files/resources/VOYCE_0.pdf.

139. *Id.*

140. CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 6 (2012), <http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

141. *Id.* at 9.

142. U.S. DEP’T OF EDUC., GUIDING PRINCIPLES: A RESOURCE GUIDE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE I (Jan. 2014), <http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

143. *Id.* at iii.

effectuate change in classified students' lives. Talk is cheap. The Department of Education and other policy makers must focus on IAES placements. No one knows the extent that IAES placements are effective. IDEA tells us what IAES placements need to be but educators, IEP Teams and advocates must ensure students receive FAPE in IAES placements. Too much focus has been placed on getting student out of the classroom. Instead the focus needs to be on ensuring that classified students are sent to IAES placements that provide FAPE. Numerous studies focus on negative ramifications of suspension and disproportional rate of suspension of classified students. The law demands that IAES placements for *each* student provide FAPE but there are no data on whether these placement provide the educational benefits consistent with *each* student's IEP. There are no studies that consider the effectiveness of IAES placement. Studies examining the quality of IAES placements may help explain why suspended students are more likely to fail out of school and get pushed into the Pipeline. There may be a correlation between insufficient services in IAES placements and a student's increased risk of failing or dropping out of school. If research identifies shortcomings in IAES placements, it will make effective change in policies possible.

Congress meant IDEA to provide disabled students a fighting chance, including after suffering suspension. Congress intended IAES placements to allow students to continue to make required educational progress by receiving all of the services and accommodations in the students' IEPs. Additional research on IAES placement is necessary to ascertain if students are receiving services to which the law entitles them. IDEA once provided a beacon of light to disabled students. That light has been fading. Our ignorance of whether IAES placements provide FAPE is dimming the light of IDEA and FAPE.