S. 4 had strong penalties under the comptime provisions. The committee substitute takes these strong penalties and extends them to violations under the other flexible workplace options.

Mr. President, the committee substitute will also include an addition to the provisions for biweekly work schedules and flextime options. It will require the Department of Labor to revise its Fair Labor Standards Act posting requirements so employees are on notice of their rights and remedies under the biweekly and flextime options as well as the comptime option.

Let me now discuss the salary basis provision. Under the FLSA's salary basis standard, an employee is said to be paid on a salary basis—and thus exempt from the FLSA overtime requirements—if he or she regularly receives a straight salary rather than hourly pay. These individuals are usually professionals or executives. Furthermore, the FLSA regulations state that an exempt employee's salary is not subject to an improper reduction.

For years this subject to language was noncontroversial. Recently, however, some courts have reinterpreted this language to mean that even the possibility of an employee's salary being improperly docked can be enough to destroy the employee's exemption, even if that employee has never personally experienced a deduction. Seizing upon this reinterpretation, large groups of employees, many of whom are highly compensated, have won multimillion-dollar judgments in back overtime pay—even though many of them never actually experienced a pay deduction of any kind. This problem is especially rife in the public sector.

Mr. President, this legislation would not affect the outcome in cases where a salary has in fact been improperly docked. If an employer docks the pay of a salaried employee because the employee is absent for part of a day or a week, the employee could still lose his or her exempt status.

The purpose of S. 4, in this regard, is to make clear that the employee will not lose his or her exempt status just because he or she is subject to—or not actually experiencing—an improper reduction in pay.

Mr. President, we're making progress on this legislation—a bill that would help give American workers the flexibility they need and deserve as they confront the challenges of a dynamic new century.

This bill will strengthen America's families, by allowing millions of hourly workers to balance family and work. Let's move forward in a bipartisan way to get it passed.

Mr. President, I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:59 p.m., recessed until 2:15 p.m.; whereupon, the Senate resembled when called to order by the Presiding Officer [Mr. COATS].

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT AMENDMENTS OF 1997

Mr. JEFFORDS. Mr. President, I call for the regular order with respect to S. 717.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 717) to amend the Individuals With Disabilities Education Act, to reauthorize and make improvements to that act, and for other purposes.

The Senate resumed consideration of the bill.

Mr. JEFFORDS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMAS. Mr. President, I would like to take just a couple of minutes to rise in support of the Individuals With Disabilities Education Act. I have a particular interest in this bill in that I have been involved for a very long time with disabilities, chairman of the disabilities council in Wyoming, my wife teaching special kids, and so I wanted to comment very briefly.

I rise in support of the current bill to reauthorize IDEA, the Individuals With Disabilities Education Act. The Federal Government, in my view, should and does play a rather limited role in elementary and secondary education. This is the responsibility generally of communities, those of us who live there. State and local control, I think, is the strength of our educational system, and yet I believe strongly that this is an appropriate Federal responsibility. This is dealing with that kind of a special problem which exists in all places to ensure that every child has the opportunity to be the best that he or she can be.

IDEA helps local schools meet their constitutional responsibilities to educate everyone, and that is what we want to do. Today nearly twice as many students with disabilities drop out of school compared to students without disabilities, and that is what it is about, to have a program that helps keep students in school.

S. 717 does not have as much punch as legislation considered in the last Congress. Some issues about discipline and litigation were impossible to resolve last year, and therefore there was no reauthorization. This bill, as I understand it, represents a consensus. It is a product of negotiation. No party involved, as usual, received all they had hoped for, but nevertheless it is a fair approach. It is a step in the right direction. This bill has had a very long journey. We owe it to our local school districts to pass this reauthorization legislation that has been stymied for several years.

Education is clearly an issue that is on the minds of all of us. It is on the minds of Wyomingites. There is a great deal of uncertainty regarding the future and shape of secondary and elementary schools in Wyoming. State legislators currently are scrambling to provide a solution to a Supreme Court ruling that funding and opportunities must be allocated more uniformly and fairly across districts in Wyoming. I am hopeful that Congress can pass this IDEA legislation and eliminate at least one of the sources of uncertainty for educators and, more particularly, for parents in my State.

Since its original passage in 1975, it has become clear that there are improvements that are necessary to IDEA. Wyoming teachers and administrators have contacted me expressing concern about the endless paper trail. I hear that every night, as a matter of fact, at home; as I mentioned, my wife teaches special kids and spends, unfortunately, as much time in paperwork as she does with kids. That is too bad.

They complain the current law is unclear and places too much emphasis on paperwork and process rather than actually working hands-on with children. The bill we have before us today attempts to reduce paperwork associated with the individualized educational plan. Teachers and administrators also write to me, and I am sure to my fellow Senators, to ask for strengthening of the discipline and school safety provisions of the law. They want power to take steps necessary to assure that schools are safe for all children. S. 717 would give the power to school officials to remove disabled students who bring weapons or drugs to school and keep them out for as long as 45 days pending a final decision. This will give educators a clearer understanding of how they are able to exercise discipline with disabled children, as they should be able to.

IDEA has also proved to be a highly litigated area of law. This bill will require that mediation be made available in all States as an alternative to the more expensive court hearings. Mediation has been shown effective in resolving most of these kinds of disputes. Meeting with the mediator will help

school professionals and parents reach agreements more quickly.

In summary, S. 717 will help cut down on the overregulatory nature of IDEA. It will allow parents and educators to work out differences by using noncontroversial and nonadversarial methods. It will go a long way toward allowing all children to learn free from danger and serious disruption. And, therefore, Mr. President, I urge that this bill be passed, that we make more certain the opportunities for disabled children in schools throughout the country.

I yield the floor.

Mr. JEFFORDS. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 242

(Purpose: To make technical amendments)

Mr. JEFFORDS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The Chair will advise the Senator from Vermont there is a pending amendment.

Mr. JEFFORDS. I ask unanimous consent the pending amendment be laid aside.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JEFFORDS. I offer the amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. JEFFORDS] proposes an amendment numbered 242.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 3, strike the item relating to section 641 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 641. State Interagency Coordinating Council.

On page 3, strike the item relating to section 644 of the Individuals with Disabilities Education Act and insert the following:

''Sec. 644. Federal Interagency Coordinating Council.

On page 19, line 19, strike ''Alaskan'' and insert ''Alaska''.

On page 26, line 4, strike ''are'' and insert ''is''.

On page 26, line 12, strike ''are'' and insert ''is''.

On page 26, line 15, strike ''include'' and insert ''includes''.

On page 35, line 5, strike ''identify'' and insert ''the identity of''.

On page 55, line 17, strike ''ages'' and insert ''aged''.

On page 55, line 19, insert ''the'' before ''Bureau''.

On page 94, line 24, strike ''Federal or State Supreme court'' and insert ''Federal court or a State's highest court''.

On page 102, strike line 3 and insert the following:

''(i) Notwithstanding clauses (ii) and

On page 140, line 15, strike ''team'' and insert ''Team''.

On page 140, line 22, strike ''team'' and insert ''Team''.

On page 177, line 8, strike ''661'' and insert ''661,''.

On page 196, line 18, strike ''allocations'' and insert ''allotments''.

On page 201, line 22, insert ''with disabilities'' after ''toddlers''.

On page 203, line 23, insert '', consistent with State law,'' after ''(a)(9)''.

On page 208, line 22, strike ''636(a)(10)'' and insert ''635(a)(10)''.

On page 216, line 6, strike ''the child'' and insert ''the infant or toddler''.

On page 216, line 7, strike ''the child'' and insert ''the infant or toddler''.

On page 221, line 5, strike ''A'' and insert ''At least one''.

On page 221, line 8, strike ''A'' and insert ''At least one''.

On page 226, line 4, strike ''paragraph'' and insert ''subsection''.

On page 226, line 7, strike ''allocated'' and insert ''distributed''.

On page 229, line 20, strike ''allocations'' and insert ''allotments''.

On page 229, lined 24 and 25, strike ''allocations'' and insert ''allotments''.

On page 231, strike line 17, and insert the following:

ferred to as the ''Council'') and the chairperson of

On page 260, line 4, strike ''who'' and insert ''that''.

On page 267, line 15, insert ''paragraph'' before ''(1)''.

On page 326, between lines 11 and 12, insert the following:

''(D) SECTIONS 611 AND 619.—Section 611 and 619, as amended by Title I, shall take effect beginning with funds appropriated for fiscal year 1998.

Mr. JEFFORDS. Mr. President, this amendment is purely to make some technical corrections in some misspelled words and a little bad grammar, which we would hardly like to have on an education bill. This was passed by the House this morning and is made part of the House bill. I know of no problems with it from either side and ask unanimous consent that it be considered as adopted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 242) was agreed to.

Mr. JEFFORDS. Mr. President, I now will be going forward with the bill. There will be two amendments to be offered, one by Senator GORTON and the other by Senator SMITH of New Hampshire. They have agreed to a time limitation. I do not know whether it has been shared with the minority or not. Under the agreement, there would be 2 hours equally divided between Senator GORTON and myself, which I will share with Senator HARKIN.

I ask unanimous consent that with respect to the amendment offered by Senator GORTON, there be 2 hours for debate equally divided between Senator GORTON and myself, and I will share with Senator HARKIN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. And I add to that unanimous consent that no second-degree amendments shall be considered in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I yield the floor.

AMENDMENT NO. 243

(Purpose: To permit State educational agencies and local educational agencies to establish uniform disciplinary policies)

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I ask unanimous consent that the pending amendment be laid aside and that the clerk report the amendment which I send to the desk.

The PRESIDING OFFICER. Without objection, the amendment will be laid aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Mr. GORTON] for himself and Mr. SMITH of New Hampshire, proposes an amendment numbered 243:

On page 169, between lines 11 and 12, insert the following:

''(10) UNIFORM DISCIPLINARY POLICIES.—Notwithstanding any other provision of this Act, each State educational agency or local educational agency may establish and implement uniform policies with respect to discipline and order applicable to all children within its jurisdiction to ensure the safety and appropriate educational atmosphere in its schools.

On page 169, line 12, strike ''(10)'' and insert ''(11)''.

Mr. GORTON. Mr. President, as you know, it is the custom in the Senate to ask unanimous consent that the reading of the amendment be dispensed with. I did not ask for that unanimous consent this afternoon because I wanted to demonstrate that the amendment before us is exactly 7 lines long, to be added to a bill which is 327 pages long—327 pages of detailed requirements imposed on each and every school district in the United States of America from New York City to Los Angeles to one of my own, Harrington, WA, a small school district in a rural farm area.

I will recap only briefly the remarks that I made yesterday relating to this entire bill, and then I will attempt to fit this amendment into some of the objections, perhaps the single most important objection that I have to the bill that is before us.

As was the case yesterday, I must start by saying that we are not operating here today on a clean slate. An Individuals With Disabilities Education Act has been a part of the law of the United States for the last couple of decades. This revises and reauthorizes that proposal. On the narrow question of whether or not this bill is somewhat easier for school districts to administer and grants them somewhat more authority than they have at the present time, the answer can only be in the affirmative. If our only choice was between a continuation of the current

law and the adoption of this bill, I would have to confess that this bill would be superior. Nevertheless, it retains all of the profound policy and balancing of power objections that are applicable to the current law to such extent that the relatively modest improvements in this bill simply do not make it an appropriate law to be passed by the Congress of the United States and imposed on every school authority and on every student and on every teacher of the United States. So it is with deep regret, and in spite of the view that the education of the disabled is an important priority, that some aid and assistance, at least, of the Federal Government to that end is an important priority, that I present this amendment and oppose the bill as a whole.

It seems to me that fundamentally the objections to the bill fall into two quite separate categories. The first and the easiest to understand is that this bill, as is the case with the current IDEA statute, imposes a huge unfunded mandate on all of the school systems of the United States. We are told, I believe by the Congressional Budget Office, that the costs imposed on the school districts of the United States next year, 1998, in that 1 year alone, will be $35 billion. That number is greater than the sum of all of the discretionary appropriations for education from kindergarten through high school passed by this Congress. As against that $35 billion mandate, we will appropriate somewhere between $3 and $4 billion to the States and the school districts when we have finished our work for the year. For the current year, the figure is just over $3 billion. So, perhaps for every $10 of costs and expenses we impose on our school districts, we will reimburse our schools $1.

It is difficult for me to imagine any Member of the U.S. Senate standing up on this floor supporting this bill if that Senator had to persuade the Congress to appropriate $35 billion to enforce it. Given the nature of our budget challenges, given our bipartisan desire for a balanced budget, given the agreement between the President of the United States and the leadership of the Congress on the budget for this year, we would not be able to find that $35 billion without repealing all of the other aid to K–12 education bills and a number of our higher education expenditures as well.

So, what Congress is doing in this bill, just as it has done for the last 20 years, is saying to each school district: We know what is best for you. We are going to tell you what you have to do. But we are not going to pay for it. This is, I am informed, the largest unfunded mandate we impose in the U.S. Congress except for some of our environmental mandates that are spread out over the private sector as well as over the public sector. It is, we are told by the Advisory Council on Intergovernmental Relations, the piece of legislation that creates the fourth greatest amount of litigation of any of the statutes of the United States. Why? Because of its immense complexity.

So, fundamentally, it is wrong that we should be debating a bill like this, or its predecessor, because we are not willing to pay for the consequences of our own actions. We make the rules. We do not pay the bills. That is the first objection to the bill, and I must confess the amendment I have just introduced does nothing about that unfunded mandate whatsoever.

The second objection has to do with the highly valid but nevertheless extremely narrow focus of the bill. The theory of the bill, the philosophy of the bill, is to guarantee a free public education to all disabled students or potential students of a grade-school or high-school age. The focus is narrow because the bill allows school districts, in providing this education, to focus on nothing else. With respect to the bill and its mandates, no other interests are even relevant. The costs of providing the education are not relevant. The individual education plan can be literally unlimited in the cost for an individual student—costs which obviously come out of the same pool of money which educates every other student and thus deprives each and every other student of what that money could furnish. The safety of the schoolroom or the school grounds is not a relevant consideration, with the narrowest of limitations, slightly broadened by this bill over current law. The classroom environment for all of the other students is not relevant in the decisions that are made under this bill.

So, whatever the impact on all of the other students, the school district simply may not consider them. Only the beneficiaries of the bill and their perceived welfare, by their parents or by an administrative officer or by a court, may be considered.

One parent in the State of Washington wrote to me on this subject and made the following statement:

> I recently asked my school district attorney what rights I had as a parent when the education program of my child was interrupted by the behaviorally disabled due to legal decisions. His response was, you have no rights.
>
> ''You have no rights.''

Yesterday, I shared with my colleagues a letter from a parent in California who responded, as I suspect thousands of others have responded, to this frustrating decision by taking her child out of the school system entirely. She was required to find privately financed education for just such a student. In this connection, the fundamental flaw in this law, as in its predecessor, is the double standard it sets both for disciplinary proceedings and for classroom environment. Every school district in the United States retains all of the powers that it had previously to discipline students for what in a different context would be criminal offenses—weapons, drugs, assaults and the like. Every school district retains the authority to act on behalf of the majority of its students with respect to classroom atmosphere and environment so a learning environment conducive to the learning of all can be enforced.

If, however, a student is disabled or contrives to get a finding of disability, all of those rules go out of the window. Discipline is severely limited. The right of ultimate and complete expulsion is wiped out entirely, and an elaborate set of requirements that take up many of the 327 pages of this bill are substituted, including legal proceedings in which attorney's fees can be imposed against the school district but not against a parent, even if the parent loses that litigation. And, inevitably, this double standard communicates itself to the students, to the subjects of our education system.

Again, Mr. President, I would like to share with you a comment from the superintendent of the Edmonds School District in the State of Washington. Edmonds is a relatively prosperous, relatively large Seattle suburban school district. Brian Benzel, its superintendent, writes:

> Our major frustration is that we continue to have high expectations for programs thrust on us by the regulations with very little resources to achieve those expectations.
>
> The result is that good people do not understand why we do some of the things we do because they defy common sense. When we try to explain the regulations and the requirements, we all come away as losers and the public support necessary for the public schools is undermined.
>
> We have had several incidents with guns and dangerous knives. We have a strong policy and clearly set an expectation that possession of these items will result in expulsion. At same time, we often get into time-consuming and expensive due process hearings where our principals are the focus of concern rather than the student's behavior. We all begin to think we're attorneys rather than educators.

Another letter from the superintendent of the Othello School District, a rural school district:

> Already this morning I have received two phone calls from principals asking for advice regarding disciplining disabled students. One student is in possession of a knife for the second time this year, and another middle school student has threatened to kill another student. Each time the principal is faced with one of these situations, s/he should not have to worry about negative consequences for trying to provide a safe environment for all of their staff and students. . . . please don't tie the hands of the administrators that are trying so hard to provide a safe learning environment for all of their students.

This is a field which has made modest progress, but it is very modest. Expulsion, as one of the superintendents spoke about, still is not an alternative. And so, Mr. President, the amendment that I have sent to the desk, and I wish to read it just once again, in its entirety it reads:

> Notwithstanding any other provision of this Act, each State educational agency or local educational agency may establish and implement uniform policies with respect to

discipline and order applicable to all children within its jurisdiction to ensure the safety and appropriate educational atmosphere in its schools.

No more and no less than that. No more and no less than considering maybe perhaps our local school boards, our principals and our teachers know more about running their classrooms and are equally concerned with all of their children as we are, we, in this artificial atmosphere, setting out 327 pages of regulations for the ordering of our public schools. Mr. President, that would be wrong if we paid for it, and, as I said earlier, we are not paying for it. Most States have laws relating to the education of the disabled. Most teachers in school districts would do the best job they possibly could in the absence of regulations, even from the State, and yet we feel in our wisdom we can set up one set of rules applicable to every school district across the country that ignores completely individual situations taking place in individual school rooms, each slightly different than the other, and that we can ignore completely the educational atmosphere in which the vast majority of our students live and work.

Is it any wonder that since the passage of this act, we have a constantly increasing number of students who are denominated disabled, when every incentive to a parent is to get such a designation, when we have a large number of so-called experts who will say that the very fact that a student disrupts the classroom is proof of disability, so that the disruption cannot be effectively sanctioned?

I believe that it is inevitable that even if we pass this slightly improved law, the number, the share of those who are denominated disabled will continue to increase; the percentage, the share of the limited dollars available for education will continue to increase. The amount of litigation and lawyer's fees, coming straight out of the educational budget, will continue to increase. One size does not fit all, and my amendment will not cure all of the shortcomings of this bill. It will leave intact the absolute requirement that a free public education be provided to every individual, disabled or not. That will not be affected. It will not solve the money problem of an unfunded mandate.

It will, however, allow the reimposition of a single standard for discipline, classroom safety and classroom environment to be determined by the school authorities most affected by those standards. It will end the process of student after student leaving the public schools because of the impact of the bills, teachers leaving the profession because of the impact of those bills, and the fact that many of us, I know in my own case, receive more complaints about this aspect of the Federal program for education in the United States than we do on any other single subject.

So, knowing in this case that the odds are stacked against me, I have tried to present this amendment in the simplest possible fashion. You either believe in a single standard of discipline and safety and educational atmosphere or you do not. If you believe in it, if you believe in the essential goodness and expertise of the people who are providing our children with their education, you will vote for the amendment. If you disbelieve in that good faith, if you disbelieve in that expertise, your problems and our problems with our public schools are far greater than those dealt with in this amendment. Free our school boards and our teachers and our administrators to provide the education we demand of them for all of our children. Free them by adopting this amendment.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in strong opposition to the amendment of the Senator from the State of Washington. I can understand his particular concern, given that the State of Washington at one time had the highest percentage of due process hearings that resulted in court cases of any State in the country. I would note that the State has taken dramatic action in the last couple of years which has greatly reduced the amount of litigation.

But first of all, let me talk about the word ''mandate,'' as it is used not only the Senator from Washington but also by many others. The indication is that IDEA somehow is a Federal mandate.

Back in the early seventies, there were many court cases and some 26 States were told that they must provide an appropriate education for children with disabilities. In order to provide national uniformity, a national consent decree was developed. The decree provided that, if a State provides for a free education, then it must provide it for everyone and, with respect to students with disabilities, it must provide a free and appropriate education. Part of the definition of ''appropriateness'' were the words ''shall contain mainstream provisions,'' or words to that effect.

It is not just an issue of court cases in those States. This is a constitutional matter—a matter of equal protection.

Congress responded by developing a bill that provided uniformity and attempted to provide information, guidelines, and rules for the States as to how to provide an appropriate education consistent with mainstreaming. It is amazing that, since that bill was written in 1975, there have been no amendments to it other than the 1986 amendments which dealt with other matters, such as early intervention as well as attorney's fees. I hope that sets the background with respect to where we are today.

Now let me talk about the cost of this education. Yes, it is costly. It costs right around $35 billion a year, of which the Federal Government provides only a relatively small amount, some 7 percent to 8 percent. The Gregg amendment, which has already been offered, attempts to rectify our failure to provide the 40 percent we promised back in 1975, but that is another issue.

The Republican education bill, S. 1, delineates a path toward living up to our promise to finance 40 percent of the cost of this education. I hope we do carry out that plan. At the same time, I do not believe we should add any amendments on that issue at this time.

What will the Gorton amendment do? If you talk about lawsuits, if you talk about lawyer's fees, it is a bonanza. This proposal may take care of some of the less than fully employed lawyers around the country. We have 16,000 school districts and, under this amendment, we would have 16,000 sets of rules. It will take us a long time to figure out what that means—which ones do you use and where do you go? Senate bill 717 sets specific rules for everybody across the country, so every State has uniformity. Therefore, I think contrary to the desire of the Senator from Washington, his amendment will exacerbate the problem rather than solve it.

Also, I would like to point out, as to the total cost, you have to consider that it is a constitutional mandate, so it is a necessary cost. It is not something which was added in order to try and benefit some people. This is a constitutional mandate. If you measure those costs and you compare them with the savings that have occurred by virtue of providing this education, then you will come up with a totally different picture.

All of us have observed in our States what has happened. Almost all the institutions which used to house children with disabilities, children who were not able to function in our society, have been closed in Vermont. Even those children who have a particularly difficult time, those who are less educable, are in private foster homes. Millions and millions of dollars have been saved in our State by that alone.

Second, there is the issue of the quality of life of individuals who are able to participate in a school system and are able to have functional lives and be employed. There is story after story after story of young people who have come through the system and become an important part of society—employed and paying their own way. To say that the cost is so high, this amendment will do nothing but increase the cost.

As I indicated earlier, I understand the concern of the Senator from Washington. In 1993, the State of Washington had 72 hearings, 26 of which resulted in court cases. The State of California, on the other hand, had 849 hearings requested—only 10 of which resulted in court cases.

The State of Washington recognized that they had to make some changes, and they did. They implemented a process of getting people together to

talk these things over and find a resolution, and the figures have changed abruptly. They now have a lot of mediation proceedings and few, if any, court cases. In 1995 and 1996, there were 137 mediations in the State of Washington, with 6 pending at the end of the year. Just about all of the cases were settled. During that same period, only three hearings were held.

In view of these improvements, I urge the Senator from Washington to withdraw his amendment. I hope we can take a look at what could happen. If this amendment passes, it would destroy a system which has apparently been working very well and would put us in a position where we would be back to court in about every case.

I hope that the Senator will end this instead of creating a problem which would destroy all of the efforts that the State of Washington has made in the last few years to get rid of the problems they had.

Mr. President, I ask unanimous consent that the facts contained in ''Mediation Due Process Procedures in Special Education Analysis of State Policies'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FINDINGS: DUE PROCESS HEARINGS

With few exceptions, states were able to provide statistics in response to survey items that asked for numbers of hearings requested, held and appealed for the years 1991, 1992 and 1993. The data is displayed in Table 6. In some states, data concerning appeals of hearing decisions to state or federal court are not provided to the department of education.

STATE DUE PROCESS HEARINGS 1991, 1992, 1993

State	Hearings requested			Hearings held			Appeals to court		
	1991	1992	1993	1991	1992	1993	1991	1992	1993
AL	27	44	53	10	10	19	1	2	2
AK	4	2	0	4	2	0	1	0	(1)
AZ	(1)	(1)	(1)	7	5	7	(1)	1	1
AR	46	15	39	6	2	13	0	1	0
CA	611	772	849	74	72	58	18	15	10
CO	16	27	26	4	3	2	1	0	0
CT	227	195	278	51	56	77	8	5	8
DE	7	10	5	2	4	3	1	0	0
FL	37	43	31	12	12	17	(1)	(1)	(1)
GA	28	48	57	10	9	24	1	0	2
HI	22	23	25	6	7	6	1	1	0
ID	8	2	6	1	1	2	1	0	(1)
IL	466	507	393	130	133	105	(1)	(1)	(1)
IN	82	59	62	32	19	17	0	1	3
IA	32	25	28	6	5	5	0	0	1
KS	(1)	(1)	31	8	4	11	0	0	0
KY	33	34	50	7	8	9	1	1	0
LA	6	7	20	3	3	7	0	0	1
ME	53	35	64	22	10	23	6	1	2
MD	26	40	50	16	19	46	0	7	14
MA	379	343	458	95	111	89	6	3	2
MI	42	34	33	14	14	19	1	3	1
MN	4	19	16	4	0	3	0	0	0
MS	2	4	23	2	4	10	(1)	(1)	(1)
MO	(1)	(1)	(1)	5	5	7	(1)	(1)	(1)
MT	6	4	10	1	2	3	1	2	0
NE	14	9	3	7	3	1	4	1	0
NV	14	31	28	2	6	5	0	0	0
NH	77	80	74	20	16	15	(1)	(1)	(1)
NJ	643	555	740	(1)	(1)	176	(1)	(1)	(1)
NM	2	5	9	0	0	1	0	0	0
NY	465	500	609	465	500	609	(1)	(1)	(1)
NC	14	24	14	2	3	2	0	1	0
ND	2	4	3	0	2	0	1	0	0
OH	47	49	51	12	12	10	4	4	2
OK	99	83	19	33	16	5	(1)	2	1
OR	26	43	56	5	5	7	(1)	(1)	(1)
PA	264	256	213	112	106	78	6	1	2
RI	32	20	25	6	2	4	0	1	3
SC	1	5	3	1	5	3	0	0	0
SD	16	19	6	3	6	1	0	2	0
TN	40	58	56	(1)	19	12	(1)	(1)	(1)
TX	131	134	118	(1)	(1)	(1)	2	3	1
UT	7	8	5	1	1	0	0	1	0
VT	12	25	22	1	9	7	0	2	2
VA	(1)	63	66	(1)	25	39	(1)	(1)	(1)
WA	(1)	(1)	(1)	19	64	72	5	13	26
WV	29	34	28	4	5	8	(1)	(1)	(1)
WI	24	23	25	5	8	9	1	1	0
WY	2	3	1	2	3	1	0	0	0

STATE DUE PROCESS HEARINGS 1991, 1992, 1993—Continued

[1] No data submitted.

Note.—Responses to items 15, 16 and 18 of the Survey on Selected Features of State Due Process Procedures conducted by the National Association of State Directors of Special Education, 1994.

As shown in Table 7, states are evenly split in the design of their systems as one or two tiered. In a two-tiered system, the initial hearing is at a local or county level with appeal or review available at the state (SEA) level. One-tiered states have a single hearing process provided by the state either directly or through a contract arrangement. An appeal to court after exhausting administrative remedies is an available option for all types of hearing systems.

Mr. JEFFORDS. Mr. President, let me discuss the bill and what it does to take care of these situations. Senate bill 717 provides one set of rules with discretion for school districts and protection for children.

The Gorton amendment, if passed, will kill the bipartisan, bicameral consensus that this measure enjoys. We simply cannot destroy all the work that has gone on throughout this country in bringing us the bill we have today—we all remember what happened last year when we thought we had a consensus. Issues similar to those raised by the Senator from Washington came up, and the whole thing fell apart. We cannot let that happen again.

If the Gorton amendment were to pass, school districts would get no relief. All the major educational organizations support S. 717, and they would all oppose this amendment.

Let me lay out a rationale of how we approach the sensitive issue of handling the discipline problems. Educators and parents need, deserve, and—in fact—have asked for the codification of major Federal policy governing how and when a child with a disability may be disciplined by removal from his or her current educational placement.

The bill takes a balanced approach to discipline. It recognizes the need to maintain safe schools and the same need to preserve the civil rights of children with disabilities.

This bill brings together, for the first time, in the statute the rules that apply to children with disabilities who are subject to disciplinary action and clarifies for school personnel, parents, and others how school disciplinary rules and the obligation to provide a free, appropriate education fit together. The bill provides specificity about important issues such as whether educational services can cease for a disabled child—they cannot—how manifestation determinations are made, what happens to a child with disabilities during the parent appeals, and how to treat children not previously identified as disabled.

We have gone through all that and we worked hard all across the country. We have a consensus on this very difficult issue, one that has been the most contentious for several years. We now have an agreement on how to handle it.

When a child with a disability violates school rules or codes of conduct through possession of weapons, drugs, or demonstration of behavior that is substantially likely to result in injury to the child or others in the school, the bill provides clear and simple guidance about educators' areas of discretion, the parents' role, and the procedural protections for the child. The Gorton amendment would say to a town or a school district that they could throw all this out and put its own in.

Dangerous children can be removed from their current educational placement. Specific standards must be met to sustain any removal. If a behavior that is subject to school discipline is not a manifestation of the child's disability, the child may be disciplined the same as children without disabilities. So, that group which has been troublesome certainly is treated just like any other child. If parents disagree with the removal of their child from his or her current educational placement, they can request an expedited due process hearing. If educators believe that the removal of a child from his or her educational placement must be extended, they can ask for an extension in an expedited due process hearing. So there is a process to make sure that no child who is dangerous is forced on the other children in the classroom.

The bill allows school personnel to move a child with disabilities to an interim, alternative educational setting for up to 45 days if that student has brought a weapon to school or a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function.

The bill gives school personnel the option of requesting that a hearing officer move a child with a disability to an interim, alternative educational setting for up to 45 days if the child is substantially likely to injure themselves or others in their current placement.

I commend the Senator from Washington. He worked so hard last year to make us aware of the need to change this. We took into consideration his advice and counsel. We came up with a version which everybody in the country has agreed to. Why does he now want to supersede it and say, ''Do away with that, let the communities decide what they want to do themselves''?

Including the regular education teacher in an IEP meeting should help to reassure that children with disabilities get appropriate accommodations and support in regular educational classrooms, decreasing the likelihood for a need for discipline.

Under no circumstances can educational services to a child with a disability cease. If a local educational

agency has a policy which prevents it from continuing services when a child is given a long-term suspension or is expelled, the State must assume the obligation to provide educational services to the child with a disability. The disabled child is protected, also.

The discipline records of the child with the disabilities will be transferred when the child changes schools to the same extent that the records of a non disabled child transfer. That is another thing, which I think was also at the suggestion of the Senator from Washington last year, that you ought to be able to provide that record with the child so the school district that receives a child has warning that there may be problems. Prior discipline records will be provided to officials making decisions about a current violation by a child with a disability.

We have gone out of our way to accommodate the suggestions of the Senator from Washington which he made last year. I think he helped us craft a very excellent bill. Why does he now want to throw it all away and say, ''Yes, notwithstanding that we took care of all these problems, we will let the communities decide how they want to do it''?

This would create chaos, and, therefore, I have to very strongly oppose the amendment of the Senator from Washington.

Mr. President, I yield such time as he may consume to the Senator from Indiana.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from Indiana is recognized.

Mr. COATS. I do not intend to take a great deal of time. I wanted to comment on this particular legislation.

Mr. President, I, like most Members, if not all Members, have been back at home discussing at official forums, school meetings, and with teachers, educators, parents, and students the impact of the current statute relative to education for children with disabilities.

Clearly, there have been problems. There have been discipline problems, as the Senator from Washington has enunciated. There have been problems of excess regulations and paperwork for teachers. There have been accountability problems for schools. There have been funding problems due to the Federal Government not living up to its promise to fund up to 40 percent of the cost of this particular education.

Now, there have been numerous attempts over the years since this was first introduced—in 1975, I believe—numerous attempts to modify and correct some of these problem areas. Most of those have not succeeded and many of the situations that have been enumerated by the Senator from Washington have continued.

By the same token, there has been nowhere near consensus in this body to revoke that statute. I think there is a solid commitment to provide educational opportunities for students with disabilities. There has been strong support for that. There will continue to be strong support for that.

The question this body has been faced with over the past 3 years is whether or not we could make substantive, important changes addressing many of the problems that arise under the current statute. Our task has been to make effective changes, gain a consensus in support for those changes, and preserve the essence of the statute. These amendments seek to provide all children with disabilities in America with the opportunity for education and do so in a way that provides more accountability, ensures a safe environment for all students, and addresses a number of the other perceived flaws in the current statute.

This has been a 3-year effort. Senator FRIST, from the Labor and Human Resources Committee, undertook the effort as subcommittee chairman last year under the chairmanship of Senator Kassebaum and spent an enormous amount of time and effort trying to pull a consensus together. We were not able to do that by the end of the session.

That effort was restarted in this new Congress under the direction of the majority leader. The majority leader appointed a special task force of Members—a bicameral, bipartisan task force of Members—to see if it was possible to get everybody in one room around one table and address these issues on an issue-by-issue basis and come to some type of an agreement. Now, when you do that, you clearly end up with a piece of legislation that is not perfect from any particular person's point of view. It leaves probably more to be discussed and debated and perhaps corrected in future efforts, but the goal here was to see if we could substantially improve the current legislation.

My colleagues need to understand that the choice here today is not between repealing the statute as it currently exists on the books and going back and writing a new one from scratch. I doubt very much we would be able to successfully do that, or at least come up with something that is in any measure different from the current statute. The choice is: Given the statute on the books; given what we know through experience over 20 years with this particular law and its implications for parents, teachers, students, educators, Members of Congress and appropriators, and others; given the need to put together a consensus that will allow us to substantially improve that current statute; the choice today is, stay with the existing law, with all of the problems that it has, all of the concerns that people have, or move forward on legislation which, while it does not give any one person everything they wanted, moves the mark very substantially toward a better bill.

I think we have done that with S. 717. We have made a better piece of legislation, a better IDEA. It is better for children, better for parents, and it is better for educators.

First, we increase substantially the role that parents play in their children's education. This is a very important principle, to involve the parents more thoroughly, engage them more in the decisions of placement, provide them with information that parents of general education students receive, and give parents access to all their children's records. This provision helps provide accountability, and helps provide a framework for understanding the problems that the teacher might be dealing with in school.

Second, we include children with disabilities in State- or district-wide assessments, and in doing so, we provide systemwide accountability. Schools will now be responsible for what children in special education are learning.

Third, S. 717 moves us toward a much better understanding of the inequity and imbalance that exists in the funding of IDEA whereby the Federal Government has not lived up to its promise to provide 40 percent of the costs of special education. We are actively engaged now in working with the appropriators and others to increase the Federal funding for this act. In fact, the Republican Party, as part of its top priority as defined in our caucus at the beginning of this session, committed to making good on the promise of the Federal Government to pay its full share of IDEA funding, and to no longer leave this obligation and burden on the States and local districts. I am hopeful that the Appropriations Committee can help us this year in making a very substantial step in that direction.

We have taken special care to address the question of the amount of regulations and paperwork that educators have to deal with. This bill provides far more flexibility for teachers and will allow them to spend more time with the children and less time filling out forms.

Finally, we have worked very carefully and very thoroughly to try to craft a discipline provision in this reauthorization bill that addresses many of the concerns raised by the Senator from Washington.

This is a particularly contentious area, and it is important that we understand that the task force looked at this very, very carefully and worked very hard to try to address these concerns.

Now, in regard to specific discipline procedures, we came to the belief that parents needed and, in fact, deserved codification of major Federal policy governing how and when a child with a disability may be disciplined by removal from their current educational placement. Here we have a disagreement with the Senator from Washington. I understand where he is coming from. But to avoid having literally tens, if not hundreds or thousands of different standards, the Federal statute

must include guidelines for a consistent standard that parents and educators can understand, so that everybody knows where we are coming from on this.

The bill takes a balanced approach to discipline procedures. It does not go all the way in the direction that the Senator from Washington would like to go, and it probably goes further than others would like to go. That, again, was part of the consensus that we reached on this legislation. But we do recognize in the discipline section the need to maintain safe schools, and to balance that with the need to retain and preserve the civil rights of children with disabilities. We are dealing with a whole series of court cases. We are dealing with legislation here that has to stand the scrutiny of the courts. So we have to pay attention, obviously, to those cases and try to craft legislation which would give us a constitutionally sound and civil rights compliant discipline procedure.

For the first time, this bill brings together the rules that apply to children with disabilities who are subject to disciplinary action and clarifies for school personnel, parents, and others, how these disciplinary rules work in conjunction with the school's obligation to provide a free, appropriate education. We have to meld these two concepts together to make an effective discipline procedure. The bill provides specificity about important issues, such as whether educational services can cease for disabled children—they cannot. But also how manifestation determinations are made, what happens to a child with a disability during parent appeals, and how to treat children not previously identified as disabled. In each of these categories, we have taken a very substantial step forward, and made very substantial improvement to the current legislation.

When a child with a disability violates school rules or codes of conduct through possession of weapons, drugs, or a demonstration of behavior that is substantially likely to result in injury to the child, or to others in the school, the bill provides clear and simple guidance about educators' areas of discretion, the parent's role, and procedural protections for the child.

Clearly, we must remember that we are dealing here with the potential for litigation, with court cases, with the civil rights of children, the rights of the parents, and the responsibilities that we give to educators. Finding the appropriate balance is not easy. It is very difficult to find that balance that will allow us to meet all these concerns and tests.

Dangerous children can be removed from their current educational placement. I want to stress this. There is a belief here that there is nothing we can do with children whose behavior is disruptive, if they bring violence to the classroom or to themselves, or if they possess weapons or drugs; this is not true. Under this legislation that we are debating and will be voting on, dangerous children can be immediately removed from their current educational placements. Specific standards must be met to sustain their removal.

So you can remove the child, but S. 717 states that you must then apply specific standards in order to sustain that removal. And it is possible to sustain that removal. If a behavior that is subject to school discipline is not a manifestation of the child's disability, the child can be disciplined the same as children without disabilities.

If, however, it is determined that the behavior was a manifestation of their disability, then, obviously, there is a separate standard to follow. If parents disagree with the removal of their child from his or her current educational placement, they can request an expedited due process hearing. These are the parent's rights. If educators believe that the removal of a child from their educational placement must be extended, they can ask for an extension in an expedited due process hearing—once again, the balance of the rights of the parents, the child and the educators.

The bill allows school personnel to remove a child with disabilities to an interim alternative educational setting for up to 45 days if that student has brought a weapon to school or to a school function, or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function. The bill gives school personnel the option of requesting that a hearing officer move a child with a disability to an interim alternative educational setting for up to 45 days if a child is substantially likely to injure themselves or others in their current placement.

There are some other provisions here, Mr. President, which, in the interest of time and because others want to speak, I won't state. I just say to my colleagues that I very much believe we have made substantial improvements and addressed some of the major concerns in the current statute. I don't discount all the things the Senator from Washington says because many in my State have indicated the same to me. We have tried to address those concerns, balancing the civil rights of those students and what we believe are important educational opportunities for those students, with the rights and the needs of teachers to have an orderly and safe classroom.

We have put all this together in this consensus bill which has been crafted with bipartisan support on a bicameral basis. I think we have a bill—maybe the only bill—that can pass. Failure to pass this reauthorization bill, or alternatively passage of the amendments being offered, would undermine the consensus process and put us back to the status quo. We would be right back to a situation where none of the complaints or concerns arising from the current statute are addressed, and we would probably go an even more considerable amount of time before Congress is able to put together consensus to address these significant concerns.

So I hope we will look past what we believe to be perfect and look instead toward what I think is a good, substantial move forward in terms of this statute. I commend the chairman of the committee for his diligent work in that, and Senator HARKIN for his long time support for this and the many others, including the majority leader, who worked so diligently to achieve this legislation.

I thank the Chair and yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I am sorry to interrupt. I know the Senator from Iowa wishes to speak, as do some Senators on this side. Unfortunately, I am now 1 hour late to a hearing that I am supposed to preside over. So I would like to make just one or two remarks after which I will yield the balance of my time to the control of Senator SMITH and he can proceed as he wishes.

Mr. President, I believe firmly that the case for my amendment has been established by the last two speakers, the Senator from Vermont and the Senator from Indiana. We have heard a wave of arguments about manifestation determinations and individual education plans and the fine distinctions between various forms of violence and disorder. My good friend from Vermont has informed me not only that he knows more about education in the State of Washington than I do, but that he knows more about education in the State of Washington than do the superintendents of my schools in the State of Washington. Mr. President, that is the heart of this debate.

If, in fact, you believe the Senator from Vermont knows more about how education ought to be provided to students in the State of Washington and in your State of Idaho, Mr. President, than do the professionals, the teachers and the administrators and the citizen school board members in your State and mine, then by all means, you should vote against my amendment and you should vote for this bill. If you believe that what uniformity means in education in the United States is that we should have exactly the same rules relating to discipline applicable to every one of the thousands of school districts and millions of students in the United States, then you should vote against my amendment and you should vote for this bill. If, however, you believe that uniformity means something quite different, and that is that the rules should be uniform with respect to every student in a given school rather than a demonstrable double standard, in which the student sitting at this desk is subject to one set of rules and the student at that desk, a totally different set of rules, that that student can do things without significant discipline that this student can't,

then you should vote for my amendment.

Somewhat naively, I had thought that all of us believed that education was so important that the most vital decisions relating to it ought to be made as close to the student and parent as possible. My friend from Indiana spoke of involving the parents more in these decisions. This bill does, but only those parents whose children can be determined to be disabled. What about the parents of the nondisabled students? Well, the quote from the letter to me, I simply need to repeat:

I recently asked my school district attorney what rights I had as a parent when the education program of my child was interrupted by the behavioral disabled due to legal decisions. His response was, ''You have no rights.''

Yes, if uniformity means the same rule for every school district, for every school board member, for every principal across the country, then this bill is going in the right direction and my amendment is going in the wrong direction, except, of course, that we are making the rules but we are not paying the bills.

I heard something about this being a constitutional responsibility. Well, Mr. President, if it were a constitutional responsibility, we would not have to legislate at all. But just recently, under the present law, the U.S. Circuit Court of Appeals in the State of Virginia ruled that the Virginia law that stated that there were certain offenses that were egregious enough to allow for the absolute expulsion of a student applied equally to the disabled and to the nondisabled.

No constitutional right for this egregious behavior was found to limit the discretion of the school authorities of Virginia. This bill reverses that decision. It says, ''Oh, no, Virginia, you have to have a double standard. You can expel the nondisabled. You cannot expel the disabled no matter what the offense.''

That is what this bill says. That is not required by the Constitution of the United States. That is a value judgment made by the sponsors and the writers of this bill.

Mr. President, I said yesterday—and it bears repeating just one more time—I have asked school districts to serve as advisory committees to me in every county of the State of Washington with whom I visit. I try to visit at least once a year, and sometimes more than once. Every one of them has someone who is a teacher or a school board member or a principal. This subject is the one brought up by far the most often by all of the people who actually provide education—the interference in the system. Oh, it is true, as the Senator from Vermont said, there are fewer lawsuits over it now than there were a few years ago. Why? Because the school district can't win the lawsuit. So it now surrenders before the process is so much as started. But the costs of that surrender are paid by every other student in those schools.

So I repeat one last time. Mr. President, if the Senators in this body who have written this bill know more about schools and about education—not just another Senator—than the people who have devoted their lives to public schools and to education, then you should follow their example.

Of course, many of the educational organizations have agreed with this bill. Their alternative was even worse—the present system. I don't blame them. I commend them for doing so. But, Mr. President, that doesn't mean they like it. That doesn't mean they think we know what we are doing. That means they were told that this was the most they could get, and you either go along or get lost. And they have chosen to go along. And they made a wise decision. But we don't have to make that decision. We can decide, if we wish, that these are the decisions that ought to be made by educators—not Senators. And, if you believe that, you vote for the Gorton amendment.

Mr. JEFFORDS. Mr. President, I yield 10 minutes to the distinguished Senator from Iowa, a leader in this area.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President I thank Senator JEFFORDS.

First of all, I thank Senator COATS for his recent statement that he just made on the floor. He hit all the right points. He talked about how long this bill had been in the making and the delicate balance that we reached. I thank Senator COATS for his efforts over a long period of time in this area to reach this very delicate balance.

I also see my colleague, Senator FRIST, on the floor. I want to publicly thank Senator FRIST again for his great leadership in this area.

I was just looking up today, and it was on May 9, 1995, that Senator FRIST held the first hearing on this bill—2 years ago. It has taken us 2 years to get to this point. He has worked day and night on this to try to get it through. Last year we had a lot of problems, and Senator FRIST hung in there every step of the way making sure that we got this bill through. It took 2 years. But we no have a well-balanced bill. I want to publicly thank Senator FRIST for hanging in there and not giving up. I appreciate that very much.

Of course, I thank Senator JEFFORDS, our leader on the committee, again for leading us in this area. Again, Senator JEFFORDS was one of the few around here who was there when Public Law 94–142 was passed. He was a leader at that time 22 years ago. He is still here to lead the charge on this landmark legislation.

I want to talk for a couple of minutes with regard to some of the things that Senator GORTON brought up.

First, Senator GORTON said there are two main objections he had to the bill. The first was that it was an unfunded mandate. This is, of course, not an unfunded mandate at all. No matter how many times someone may say it or how strongly they may say it, this is not an unfunded mandate. The Congressional Budget Office, the American Law Division of the Library of Congress, and the Supreme Court, have all said this does not fall under the unfunded mandate legislation. So it is not an unfunded mandate. It is a civil rights bill, it is a law implementing the equal protection clause of the 14th Amendment to the U.S. Constitution. It is not an unfunded mandate.

In other words, Mr. President, let me put it this way. The State of Idaho does not have to provide a free public education to its kids. If the State of Idaho decided to stop that, they can do it. But as long as the State of Idaho decides that they will provide a free public education to all their kids, then the State of Idaho can then not discriminate against kids because they are black or they are brown or they are female or they are disabled. That free education must be available to all kids. The Supreme Court has decided that.

So it is a constitutional mandate, not an unfunded mandate.

What we have said with IDEA—Public Law 94–142—is, ''Look, we will try to help the States meet that obligation because it will cost some money, and we will help them meet that.'' That is why Senator GREGG moved in this area to get the Federal Government to pick up more of that obligation. We should. But I do not want to go into that anymore. Senator JEFFORDS responded to that.

But this is a civil rights bill.

What Senator GORTON's amendment basically says is, if you just read the first words, ''Notwithstanding any other provision of this act,'' each State educational agency, et cetera, can decide for themselves what they want to do. Notwithstanding anything else, they can do whatever they want to do.

Would Senator GORTON apply that same reasoning to the Civil Rights Act of 1964—notwithstanding any other provision of the law, if a jurisdiction wants to discriminate against African-Americans, they can do so, they can fashion whatever framework they want? Would Senator GORTON apply that to title IX and say, ''Well, with regard to women, each jurisdiction can decide whatever they want and how it applies to women''? We can do that with the civil rights bill? Of course not. Civil rights applies to all in this country.

The second thing he brought up was the cost. He mentioned something about the cost of this in terms of the mandate. There are a lot of ways to look at the cost. But what is the marginal cost of this? We have some figures here. You have to look at the savings. The average per student in America for those in special education the average cost is $6,100.

So it costs about 14 percent more marginally to educate a kid with disabilities than a child without disabilities.

Well, is it worth it? We have to ask: Is it worth it to spend that 14 percent?

Look at it this way. Mr. President, in 1974, before the enactment of this bill, 70,655 children were living in State institutions. By 1994, 20 years later, as a direct result of this bill, that number went to 4,001—less than 6 percent of what it had been 20 years before.

What is the cost? What is the savings? The average State institution cost was $82,256 per person in 1994.

So, if you take the difference of $66,654 for kids that are not institutionalized but are in school learning, that is a savings to the State of $5.46 billion each and every year. That doesn't include the savings later on in welfare costs.

For example, my friend, Danny Piper, who got special education, went to school. We figured up for Danny Piper that the total cost of his special education was $63,000. That is what it cost. Danny Piper today is living on his own in an apartment and takes the bus to work. He is employed. He is a taxpayer. He is not in an institution. But when he was born with Down's syndrome, the doctors told his parents, ''Put him in an institution.'' They refused to do so. Because of IDEA, they got him in school in special education. He did well in high school. Now he is working and making money. The cost to the taxpayers of the State of Iowa to institutionalize Danny Piper would have been $5 million. Do you know what it cost us? $63,000 to get him his education.

So you can look at it from the cost, but you have to look at it from the other side—the savings side, not to mention lifestyles, quality of life, and what it means to the Danny Pipers and others not to be institutionalized.

Lastly, Senator GORTON talks about the double standard. I am sorry. That is just not so. There is no double standard here at all.

I guess what we have to ask is, What do we want at the end of the day? At the end of the day, we want a safe classroom with an environment that is conducive to learning for all students. That is what we are all about. What we want to do is teach children behavior that will lead to that safe, quiet classroom that is conducive to learning. Under IDEA, we want to use discipline as a tool to learn and not just as a punishment and to ensure that each child receives the supportive services necessary to function appropriately in a classroom environment.

For example, we have some examples of kids. Here is one. I have hundreds of these examples. Here is one, Nick Evans in Wisconsin. I have a letter here dated January 24, 1997. He was in school. He was fighting. We are told that they did not know what to do with him. We are told by the school that they felt Nick was emotionally disturbed, mentally retarded, and did not belong in the school. They did not know what to do. But they sought an evaluation at the clinic in La Crosse, WI. They met with the child's specialist. He had a superior IQ of over 130. His behavior problem stemmed from tremendous frustration of an unidentified, profound learning disability. Once that was recognized, once he got the supportive services, his behavior problems literally disappeared overnight. Now he is an A, honor roll, student. The kids want to work with him. When he is doing a class work science project, the classmates choose to work with him. This is a kid who the school said, ''Kick him out. Get rid of him. He is disturbing everybody. He is dangerous.'' But he got the supportive services and the proper kind of discipline—the discipline to teach him how to act within that environment.

I can go through a lot of them. Here is Molly, who was very abusive to others, hitting and pushing them; teachers wanting the child removed. A speech language pathologist was called in. They commenced a program and found out that she had a communications problem. Within 12 weeks her ability to talk to her peers grew. Her behavior problems faded away.

Here is a family of three. The children engaged in fighting, aggressive outbursts, name calling. Frustrated by lack of support by the school system, they moved to a neighboring district where they found the support, and now all three of their kids are honor roll students and doing well.

Let me talk about Mike McTaggart of Sioux City, something closer to my home. I visited the school last year. Mike McTaggart is the principal of West Middle School in Sioux City. Listen to this. There are 650 students in the middle school. Student population is 28 percent minority, 32 percent are children with disabilities, and one out of three have IDP. One year prior to Dr. McTaggart coming there and taking over this school, there were 692 suspensions, and of those suspended, 220 were disabled children. The absenteeism rate was 25 percent, and there were 267 referrals to juvenile authorities in 1 year.

In 1 year. Dr. McTaggart came in, and 1 year later the number of suspensions of nondisabled children went from 692 to 156. The number of suspensions of disabled children went from 220 to zero. Attendance has gone from 72 percent to 98.5 percent. Juvenile court referrals went from 267 to 3.

What happened in that 1 year? We had a principal who came in—who brought a different philosophy, a philosophy of using discipline as a tool to teach rather than to punish, and turned that school around by involving kids and involving their parents. That school is very successful today. But if you had looked at that school before he got there, there was a lot of blame on the kids—blame the kids, blame their parents. They shouldn't be there. They are dangerous. Get them out of there. There were 267 referrals to juvenile authorities—from that to 3 in 1 year—and 220 disabled kids were suspended. It went to zero the next year.

I am just saying that is again bringing in someone who understands a different philosophy, that you use discipline as a method of teaching and enabling—not just as a method of punishment.

Lastly, the Senator from Washington State kept asking the question. He had a letter that he was reading from a parent in Washington who basically said that I asked my attorney—and I am paraphrasing here. But the letter the Senator read into the RECORD was, what rights do I have for my child to be free from all this commotion, and dangerous activity in school. And the attorney said, ''You have no rights.'' Well, first of all, I would suggest that parent get a different attorney because you do have rights.

That parent has the right to demand of that school a safe and conducive learning environment. They have a right to demand that. They ought to demand it. What they don't have the right to do is to demand that a disabled kid gets kicked out of school. They don't have that right.

It would be like this. Let's say, Mr. President, that a caucasian kid came to school and had to sit next to an African-American. They said, ''Well, I don't like that. I don't like this integration.'' I am conjuring up memories of a few years ago. ''Oh, no. Those kids cause all kinds of problems in school. They couldn't be conducive to a learning environment.'' Well, we found out that wasn't so, as long as teachers and principals and parents got together, and in sort of an atmosphere of working together, it was fine; no problems.

Let's say that a child went to school, and all of a sudden sitting next to him was a physically disabled child who made them nervous because they didn't look the same, they didn't act the same, they had a physical disability that, well, maybe they weren't like the rest of the kids. Would a parent who said, hey, wait a minute. My kid has to sit there and it's disturbing; it confuses him; it is not a good, conducive atmosphere for him to learn—would that parent have the right to say, kick that disabled kid out of school? No. But what the parent has the right to do is demand of the school that they provide a safe and conducive learning environment.

That means at least to this Senator that the school has to develop strategies to make the classroom safe and quiet and conducive to learning. If kids are disturbed by someone who is in the classroom, by their appearance or by their actions, that means you develop a strategy to deal with it and bring the parents in and provide for an atmosphere where kids can learn, not just a knee-jerk reaction and say, well, the easiest course of action is to expel them, kick them out, get rid of them, segregate them, exclude them.

We have been down that road before. The whole theory of IDEA, the Individuals With Disabilities Education Act, is to mainstream, is to bring people together, not to segregate people.

So I would say to the person who wrote that letter to Senator GORTON, yes, you have that right; go to that school and demand the safe, conducive learning environment. You have that right. But you do not have the right to demand the kid gets kicked out because he or she is disabled. You do not have that right. So I would suggest that perhaps they ought to get a different attorney. I just wanted to make those comments. I did not have the time before.

There was one other thing. Again, showing how things can happen if people really do want to make it work, will work together, on January 29 of this year Elizabeth Healy, a member of the Pittsburgh School Board, testified before our committee. She said she thought IDEA was a good law; it is working. She said the Pittsburgh School District has adopted a family centered inclusive approach to provide special education. Because of what they did in Pittsburgh, because of this family centered approach, the number of due process hearings has plummeted.

Unlike reports from other urban school districts regarding the due process hearings, last year there was only one due process hearing and one special education mediation in the entire school district in Pittsburgh. I do not know a lot about Pittsburgh, but it is a pretty urban city. One due process hearing, one special education mediation in the entire school district.

I might suggest to the Senator from Washington that he might want to take the principal of this school that he keeps talking about with all these problems and maybe send him to Pittsburgh and have him look at what they did there or send him to Sioux City, IA, and we will have him look at what Principal Mike McTaggart did there. And maybe, and I say this in all candor and seriousness, they could pick up some pointers on how to structure the school environment, how to involve the families, so that they will have the same results as Sioux City or the same results as Pittsburgh.

So I am saying it is not impossible. It is very possible to have a safe and conducive learning environment and to meet at the same time the requirements of the Individuals With Disabilities Education Act. What it really takes is a commitment by the school boards, teachers and principals, parents and the community to work together in an atmosphere of mutual accommodation and understanding and support. If they do that, there won't be that many problems. Oh, you will always have some problems, but, my gosh, Pittsburgh went down to one due process hearing. That is the kind of goals we ought to be looking for.

That is what this bill does. That is what this bill does. I have to tell you, Mr. President, a lot of times my heart goes out to teachers who are in the classroom and they are confronted with situations where they have emotionally disturbed kids, physically disabled kids, mentally disabled kids, and that teacher does not have the proper support and learning and training to know how to deal with it. Teachers need that support. They need that kind of training and that kind of educational support that will help them. That is what we are talking about here. If they do that, IDEA will work, but it will not work if our reaction is, first of all, notwithstanding any other provision of this act, let each school district decide for themselves.

That is what the Gorton amendment does. That is not conducive to an inclusionary-type of principle where we are going to bring kids together. We are a much better society today because we have included people with disabilities. We are a stronger society. As President Clinton says so often, as we enter the next century, we cannot leave one person behind, and we certainly should not leave people behind just because they have a physical or mental disability.

That is what this bill does. It provides those kids with that support and those opportunities the kind of education that allows kids to dream and allows kids with disabilities to know that they can fulfill their potential. We all have different potentials. Kids with disabilities are no different. They have potential, too, to achieve, to dream, and to do wonderful things. We have seen it happen because of the Individuals With Disabilities Education Act.

This bill that we have before us, this reauthorization, as I said, is carefully crafted, very balanced. I think it meets all of the needs of parents and school administrators and, most importantly, meets the needs of the kids themselves not to be segregated out but to be included, to make sure they have the support they need so that they can become fully self-sufficient, productive, loyal American citizens in their adulthood. That is what this bill is all about.

Mr. President, are there situations where a school officials must take immmediate action to remove a disabled child from his or her current placement? The answer is yes, and this bill provides for two limited exceptions to the stay put provision under which children with disabilities are entitled to stay in their current placement pending appeals.

Under the first exception to the stay put provision, school officials are provided authority to remove a child from his or her current placement into an interim alternative educational setting for the same amount of time they could remove a nondisabled child, but for not more than 45 days, if the child carries a weapon or knowingly possesses, uses, or sells illegal drugs or controlled substances.

Under the second exception to the stay put provision, local authorities can secure authority from an impartial hearing officer—in addition to a court—to remove a child from his or her current educational placement into an interim alternative educational setting for up to 45 days if the school officials can demonstrate by substantial evidence—that is, beyond a preponderance of the evidence—that maintaining the child in the current placement is substantially likely to result in injury to the child or others.

Some of my colleagues have raised concerns about allowing impartial hearing officers to make these critical decisions. I support this provision for several reasons.

First, this standard codifies the holding in Honig versus Doe. In that case, the burden was clearly placed on the school officials to rebut the presumption in favor of maintaining the child in the current placement. Thus, the case does not deal with perceptions or stereotypes about disabled children but provides authority to remove a child who truly is dangerous.

Second, in giving the authority to make these determinations to impartial hearing officers, the proposal not only includes the ''substantial likelihood of injury'' standard, but also specifies that the hearing officer must consider the appropriateness of the child's current placement and whether reasonable efforts have been made by the local school officials to minimize the risk of harm, including the use of supplementary aids and services, and if the child is moved, the hearing officer must determine that the new placement will allow the child to continue to participate in the general curriculum and to meet the goals of the IMP and that the child will receive services that are designed to address the behavior that led to the removal.

Third, in placing this additional authority with hearing officers, the bill recognizes the important role already assigned to these individuals in guaranteeing the rights of disabled children. It is because of the importance of this role that the act requires that hearing officers be impartial. This means, for example, that a hearing officer could not be an employee of the child's school district. It is my expectation that the Department will re-examine current policies concerning impartiality in order to ensure that, to the maximum extent feasible, the integrity of these persons, and thus the system, is ensured.

It is also my expectation that hearing officers will be provided appropriate training to carry out this new responsibility in an informed and impartial manner and that both SEA's and the Secretary will closely monitor the implementation of this provision.

In sum, Mr. President, we do not have to choose between school chaos and denying education to children with disabilities in order to maintain schools that are safe and conducive to learning. If anything, parents with disabled children want schools that are safe and conducive to learning more than other parents because their children are frequently more distractible and more likely to be the brunt of attacks and abuse.

Parents who have disabled children are not asking that they be excused from learning responsibility and discipline. What they are asking for is that the approaches used be individually tailored to accomplish the objectives of maintaining a school environment that truly is safe and conducive to learning for all children, including children with disabilities.

Mr. President, this bill provides a fair-balanced approach to ensuring school environments that are safe and conducive to learning. I urge my colleagues to support the underlying bill and reject the Gorton amendment.

I yield the floor.

Mr. JEFFORDS. Mr. President, I compliment my good friend from Iowa, who, along with me, came in about the time that this special education legislation was enacted back in 1975, and we have worked closely together on matters of disabilities ever since that time. It is a pleasure to work with the Senator. I think we have had pretty successful adventures along this line.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I yield 10 minutes to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee is recognized for up to 10 minutes.

Mr. FRIST. I thank the Chair.

The amendment that I wish to talk to is the amendment on discipline which would instruct local education agencies to set their own policy in disciplining disabled students. In short, each school district could then have its own distinct policy defined for itself in how to discipline children with and without disabilities. I oppose such an amendment.

A statement was made that the underlying bill is leading us in the wrong direction and that this amendment would set us back in the right direction, at least in that one area of discipline. I disagree.

In the statement, the case was cited that there were two schoolchildren sitting together, one with a disability and one without a disability, and that they both should be treated exactly the same.

I would argue that that is difficult to do. Let me give two brief examples where I find it hard to have a different process other than the one spelled out by Senator JEFFORDS and as spelled out in the definitions. And, yes, it is several pages long because it takes that sort of detail when we are dealing with the issue of individuals with disabilities.

Let us say that one of the people in these chairs has a syndrome called Tourette's syndrome. That individual who would be sitting in that chair could learn just as well as the other individual, could take advantage of the education just as well as that other individual. If that individual has a disability, a disability called Tourette's syndrome where, with everything else hooked up in a normal way, there is one little cross-connection in one little tiny part of the brain that causes that individual, while they are sitting there studying and learning with the same capacity as everybody else, with the potential to be as successful an individual as anybody else, for some reason we do not understand—as a physician, I do not understand, scientists do not understand yet; hopefully, we will change that—that individual all of a sudden blurts out something that does not relate to anything at all.

Should that person have the same process for disciplining as the individual next to him? Some people would say yes. I would say no, that some attention needs to be paid that that is a manifestation. And, yes, we spell it out in the bill. What if we did not? What would we go back to—22, 24 years ago where that student would be thrown out of the classroom and thrown out of school through no fault of their own when they can learn just as well as anybody else? I say no, the process needs to be different. And it is spelled out in detail as the Senator from Vermont has read from the bill earlier—a different process. You can call that a double standard, I guess, because people will react to that and say, no, double standards are wrong. I call it a different process and for a very good reason. If you go back 25 years, you see why.

Or let us say there is another student. Let us call him Tom. Let us put him in the fourth grade. Let us say he can learn well, he has the potential to be everything that one would wish his son to be in the future, yet Tom has a severe developmental disability. Say he is an individual with mental retardation. I do not know exactly what that means, but most people understand generally what I am talking about. And let us say somebody comes up to Tom in the fourth grade—and we all know bullies like this. This is the reality. This is the reality of the classroom today. A bully comes up and says, we are going to get Tom; let's give Tom this little toy gun. ''Tom, this is a little toy gun.'' In truth, this is not a toy gun. In truth, that bully brought it from home, put it in his pocket, and he knows how to get Tom and he gives it to Tom. And Tom says it looks like a toy gun. As a father, I can't tell the difference between toy guns and real guns. I look at them closely. Tom looks at it and says, yes, and I appreciate the gift, and so he puts it in his locker. Now the principal or teacher comes forward and opens the locker and finds what Tom thinks is a toy gun. Remember, Tom can learn just as well as anybody else, can benefit from an education. Should the process be to throw him out of school when it probably is a manifestation of his disability? And so, yes, you can call it a double standard. I call it a process, a very specific process where we do have to spell out manifestation and, yes, it takes more than six lines on one page to do that.

It is not quite so simple, and I would argue that with two people sitting in the same room, if one of them has a manifestation of a disability, we need—and not just we but people across all 16,000 school districts—to have a process, a fair and equitable way, to discipline that individual.

Senator HARKIN mentioned that 2 years ago I held a hearing, and it was really the first hearing I held as chairman of the Subcommittee on Disability Policy. It was about the original enactment and what led to that enactment. I was looking at those hearings, and it was really powerful. I encourage my colleagues to go back and look at that 20-year history, what led up to it. It was very clear that IDEA, the Individuals With Disabilities Education Act, was enacted to establish a consistent policy, not what Senator GORTON's amendment would do, have 16,000 school districts each with their own policy to handle the sort of situation, but it was enacted to establish a consistent policy that people could read and understand for States and school districts to comply with. With what? The equal protection clause under the 14th amendment of the U.S. Constitution.

We hear the words ''unfunded mandate'' and ''mandated.'' We passed IDEA. Unfunded, yes. I will not argue with that. A mandate? This goes back to a civil rights issue as defined by the Supreme Court decision after IDEA was enacted. The Supreme Court, under Smith v. Robinson, recognized IDEA as ''a civil rights statute that aids States in complying with the equal protection clause under the 14th amendment.'' Again, it was very clear to me in those hearings 2 years ago as we went back and looked at the decisions, two landmark decisions that Senator HARKIN talked about yesterday, in 1972 which established the constitutional rights—not a mandate, the constitutional rights—for individuals with disabilities to receive a free, appropriate public education.

So now what we want to do is turn back to allow 16,000—it may be 15,000, it may be 17,000—individual school districts to try to go through this definition to really throw aside what we have learned over the last 20 years, which we have modernized through our current bill, to go back and allow 16,000 school districts to reinvent the wheel, to try to learn once again what we have learned over the last 20 years—potentially 16,000 separate policies.

Talk about lawsuits. We have had many people comment on attorneys and attorney's fees and how difficult it is. Talk about lawsuits with 16,000 different policies. I can see somebody moving from Davidson County where I live to Williamson County only because, as parents of a child with disabilities, they think that the discipline requirements might be fairer. I think lawsuits will explode. Our bill provides one set of rules, an update, defining, yes, manifestation and, yes, discipline

if it is not a manifestation in a very clear way, with discretion for school districts, with protection for children.

The whole manifestation issue I do not think we need go into now. The Senator from Vermont went through it in pretty much detail. But let me just point out again for weapons or drugs—and it has been expanded to cover weapons, possession and use or distribution of illegal drugs—if it is not a manifestation of that disability, the school would discipline that student just as they would a nondisabled student who engaged in such behavior. There is nothing exceptional about that. If it was a manifestation, very clearly—so all 16,000 school districts can understand this civil rights issue—how to discipline that student in an orderly way that parents understand, the individuals with disabilities understand, the principals understand. For all other behavior subject to disciplinary action, again, if it is not a manifestation, that is, other than weapons and other than drugs, again, students are treated just as those without disabilities. If it is a manifestation, again, it is spelled out in IDEA.

I just close and simply say that all major educational organizations do support this bill. It is not perfect. We sat around the table night after night and day after day bringing people together. It is not perfect. But they say support this bill. Why support this bill? Because this bill as clearly defined is the way that we can improve the treatment of individuals with disabilities in discipline.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. I yield the Senator from Minnesota 5 minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized for 5 minutes.

Mr. GRAMS. I thank the Chair.

Mr. President, I want to take this opportunity to commend my friend and colleague, Chairman JEFFORDS, for the exemplary work he has done in regard to the reauthorization of the Individuals With Disabilities Education Act. That this is the first time in 22 years that Congress has attempted major changes to its law with any likelihood of success speaks volumes about the time, energy, and commitment Senator JEFFORDS and others have devoted to it.

Over the last 5 months, I have listened to the concern of school board members, students, parents, principals, teachers, and administrators from all over Minnesota on the issue of IDEA. Primarily, each of these groups stressed concern over proliferating litigation, program inflexibility in regard to discipline, and the tremendous cost burdens associated with the mandates that have been placed on our schools.

In regard to the issue of discipline, this legislation provides additional flexibility to deal with children who are disruptive in the classroom or who are otherwise a danger to themselves or others. Clearly, this is an instance where the interests of the child and the interests of sound learning in the classroom must be carefully balanced to ensure that neither are breached. Unfortunately, current Federal law dictates that a child may only be removed from school if the parents consent to removal or if the student brings a firearm to school.

Mr. President, this is not balance at all. This legislation makes considerable strides toward restoring some balance by returning more decisionmaking to the people who know best, and that is those who actually teach our children.

Another issue is litigation. According to a study done by the Minnesota State Legislature, one of the largest factors contributing to the increased costs in educating their children is the cost of special education. Unfortunately, too many of these expenses have nothing to do with buying things such as Braille for the visually impaired or providing instruction for children with disabilities. Many of these expenses are legal fees resulting from litigation between schools and the parents of children with disabilities.

In light of the limited resources available to pay for the mandates imposed by IDEA, this is a glaring flaw that is ripe for reform. Toward this end, S. 717 requires States to establish a mediation system and provides incentives for parents to avail themselves of mediation instead of litigation to amicably resolve their differences.

The one issue that is not addressed in this legislation, however, and it is, in my view, a critical one, is the issue of funding. The Senator from Vermont has urged Senators to wait for another day to tackle this issue. The Senator's objection to dealing with funding at this juncture is not based on substance but, rather, on process, and I fully appreciate these constraints. We need to pass this bill.

However, because I believe the issue of funding is so vital to the success of IDEA's reforms, I must reluctantly part paths with the chairman. I believe the funding issue should be addressed now. As Senator GORTON has pointed out, IDEA is an unfunded mandate on our 50 States and our schools. As such, consistent with the spirit, if not the letter, of the unfunded mandates legislation we approved last Congress, the mandate imposed by IDEA should either be repealed or it should be paid for. As it stands, the Federal Government pays a mere 7 percent of the total cost we impose on our schools through IDEA. It is my considered opinion that the Federal Government should put its money where its mouth is. In short, Congress must fully appreciate the consequences of its actions. If Congress places a premium on a desired goal or sets a priority for States or local governments to attain, the Federal Government must ante up or then reconsider that mandate. And because I believe IDEA serves an important role in the education of our disabled children in Minnesota and throughout the Nation, in this case I believe Congress should ante up. Accordingly, if it is offered, I will support the Gregg amendment to fully fund the Individuals With Disabilities Education Act.

In conclusion, Mr. President, I just wanted to say again I support S. 717 because it does improve upon the commitment we have made to disabled students in Minnesota and throughout the country. Although I wish it would have gone a little farther, I support the Gregg amendment, as I said, because it backs up this profound commitment. But in my view, if we at the Federal level really desire to help our Nation's schools, we will finish the jobs we started. Beyond this, the Federal Government's next job in furthering the education of our children is to step aside and allow parents and school boards to do the job they were designed to do and not the Federal Government.

I thank the Chair. I yield the floor.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER (Mr. ENZI). The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 27½ minutes.

Mr. SMITH of New Hampshire. Mr. President, I yield 5 minutes to my distinguished colleague from West Virginia.

Mr. BYRD. Mr. President, I thank my friend, the Senator from New Hampshire, [Mr. SMITH].

The PRESIDING OFFICER. The Chair recognizes the Senator from West Virginia.

Mr. BYRD. Mr. President, the Senate is expected to vote shortly on S. 717, the Individuals With Disabilities Education Amendments Act of 1997, also known as the IDEA bill. Mr. President, I compliment the managers of the bill, Mr. HARKIN and Mr. JEFFORDS. They have worked hard and the legislation is certainly an improvement over the current situation.

I do have some reservations about the contents of the bill—I intend to vote for it—and about the manner in which it was brought up for consideration.

Before I cast my vote, I would like to take this opportunity to express my concern with the legislation. First, and foremost, a committee report on S. 717 was not available until early on Monday, yesterday, and the Senate proceeded to debate S. 717 on Monday. That is not anything new around here. We are witnessing more and more of it, and too much of it. I was not able to secure a copy of the report until yesterday afternoon, which constrained my ability to read the committee report as thoroughly as I would have liked. It is unfortunate and unnecessary that our independent judgment as Senators is so often being subjected to

narrow time constraints to render a decision on the ramifications of important bills such as this one.

In addition, I have been contacted by a number of West Virginians who have raised concerns about the ''stay-put'' clause in the current law for violent and disabled students. The ''stay-put'' provision means that a disabled student cannot be removed from his or her current classroom until a hearing is held to resolve the matter. Under S. 717, steps have been taken to attempt to correct this matter by permitting local school authorities to relocate a disabled child into an alternative educational environment for up to 45 days pending an appeal if he or she brings a weapon to a school or a school function, or consumes or solicits a controlled substance.

I think these provisions are improvements, as I say, over the present. But I don't think they go far enough. Why should school authorities be limited to a period of 45 days for the removal of a disabled student—disabled or any other student—who carries a weapon to school or uses drugs at school or school-sponsored events? Why not 90 days? Why not longer, if the situation warrants it? While I applaud the efforts of the sponsors to provide the local schools with more authority to deal with a violent and disabled child, I am disappointed that more stringent discipline provisions are not included in the final draft of the bill. We ought to consider the security and educational needs of every student in the class, in addition to the disabled child.

Finally, I have, over the years, detailed the national problem of alcohol abuse, and have urged people, young and old, not to drink and drive—but not to drink, period. That is the way I feel about it: Not to drink. I have urged people, young and old, to abstain from drinking alcohol. Yet, S. 717 makes no reference to a disabled child who brings or consumes alcohol on school property. I know the sponsors would argue that the bill contains language that would allow local school officials to exact discipline under the same terms that a nondisabled student would face. But it is my opinion that alcohol is just as evil as any other drug defined by the Controlled Substance Act, to which S. 717 refers. Therefore, I believe that the bill should include alcohol under the provisions that relate to school officials' authority for the immediate removal of a disabled child who possesses a weapon or a controlled substance on school property. I hope that, when the managers again consider legislation of this type, they will consider carefully the inclusion of the word ''alcohol.'' It does not hurt to have it in, and it may help.

In conclusion, I will vote for S. 717, the Individuals With Disabilities Education Amendments Act of 1997, but I would like to inform my fellow Senators that the manner in which we have arrived at this point troubles me. Proponents of the bill have argued that the quick markup of the bill and its subsequent expeditious floor clearance was necessary to avoid a subsequent demolition of the fragile agreement that has been reached. Mr. President, if it is all that fragile, perhaps we ought to start over. Mr. President, efforts to ram legislation through, not only in this case but all too many other cases, as we have seen around here in late years, are not consistent with the duties of the Senate to adequately deliberate on a matter that affects millions of disabled and nondisabled children who have a right to a safe and appropriate public education.

Mr. President, I thank the distinguished Senator from New Hampshire for yielding me the time. I again congratulate the managers of the bill and I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I want to indicate, first and foremost, that I understand what the sponsors of the bill are trying to do. I support the concept of reforming the IDEA law. I do not fault them for trying to make the changes. What I fault is the process in which we bring the bill to the floor with a locked-up agreement. One of the greatest aspects of the U.S. Senate is that we have the opportunity to debate, and hopefully sometimes have a couple of people listen to what we say and influence an outcome. I realize that does not happen very often around here. But in this particular case, we do not have the opportunity to influence the outcome because we are told: A deal has been struck between the House and the Senate, minority and majority, White House and everybody else. It is just one happy old time here, everything is done and we do not need to debate it, we do not need to suggest any changes.

Perhaps an analogy might be if we had an agreement to spend $1 billion on cancer research and somebody told us if we spent another $50 million we could cure cancer, I think we would be prepared to amend the bill to add the $50 million to the $1 billion in a hurry. So I do not support this kind of process. I do not think it is right, and I think that we can strengthen a bill and, if somewhere along the line the President specifically decides to veto the bill with the strengthened provision, we have a constitutional process—the Founding Fathers thought it out very clearly—which says that bill would come back here, to the Senate and House, and we could override his veto or not. So I do not think anything is lost by allowing Senator GORTON and myself the opportunity to offer amendments in good faith.

You might say, You are offering your amendments. Yes, we are, but we are offering them with just about everybody out there against us, even though I believe our ideas are good.

Senator GORTON made some very interesting points on his amendment, and I rise in strong support of that amendment, which is the business before us. He made the interesting point that he did not feel U.S. Senators necessarily knew more about what was happening in the various school districts in Washington State or in New Hampshire, for that matter, than the people in those districts did. I could not agree with him more. I bring perhaps a different perspective than many of my colleagues here in the Senate. I spent 6 years in the classroom as a teacher. I also spent 6 years on a school board. I know what Public Law 194 is, and I know the good things that that law has done for people who are in need of special education. It has done wonders for many, many students who were in need.

The Senator from Iowa made specific reference to one individual who had been helped under this program. I applaud that. That is not what we are talking about. What we are talking about is this basically distorting the process to write individualized education plans for people who perhaps should not have IEP's; who really are not in the same category as the young man who was mentioned by the Senator from Iowa.

I took the opportunity, even though this is not a bill that is in the jurisdiction of any of my committees—that is Senator JEFFORDS' committee—I did something that perhaps is not always done around here, I wrote to all the school districts in my State and I asked for input on this legislation. I informed them I felt there was a good opportunity, that Senator JEFFORDS and others were moving the bill through the process here, that it was going to improve the special education program or IDEA as we know it, and I think Senator JEFFORDS has done that. He has improved it. But the question again goes back to my original point. Can we improve it more? I think Senator GORTON's amendment does that. I would like to explain why I think that is the case. I would like to explain the rationale for the amendment, which is intended to ensure that the education of all students not be compromised.

This is an important issue. I wish we had the opportunity for more debate, but unfortunately we do not have that. The problem the Gorton-Smith school safety amendment addresses is, I believe, one of the most serious problems in all of the legislation. A safe school environment is a precondition for learning.

I listened to my colleague, for whom I have the greatest respect, Dr. FRIST, the Senator from Tennessee. He used some medical examples and indicated that there are times when these unexplained medical occurrences occur. I understand that. I respect that. I do not claim to challenge his medical knowledge. But I hope we might speak from the teacher's point of view, because that is what this is all about. We are not talking, here, just about helping children who need help. That is one part of it. There are children who need

help. But there are also children, for whatever reason—whether it is because they need help or because they got an IEP that they should not have gotten, an individual educational plan—they are disrupting the classroom. And there are other students in that classroom.

When I am standing before that classroom, trying to teach 25 other students, and this student blurts something out and disrupts the class, or waves a gun in class, or brings drugs into class, or shouts obscenities, or whatever else the student may decide to do, it really, as far as the other 25 students in the class are concerned—I do not really think that they are overly concerned at that point, when the classroom is disrupted and education is disrupted, as to what the cause is, or what the problem may be specifically with this child. It is a problem. If it is a medical problem, it ought to get medical attention. If it is a discipline problem, it ought to get disciplinary attention. That disciplinary attention ought to come from the decisions of the teacher, parents, school board, school administrators—not from the Federal Government. Not from the U.S. Senate.

So, the school safety amendment is a commonsense addition to this bill. That is all it is. It simply ensures that the rules governing discipline in schools may be formulated in such a way as to treat all students uniformly. Without this amendment, S. 717 will preserve the double standard that exists under current law. Students will see there is one standard for students diagnosed with disabilities and another one for those who do not have such a diagnosis.

Recently, my office received a call from a school board chairman in New Hampshire complaining that a student in one of the districts had brought a gun to school. He reported that because the student had been diagnosed with a disability, the school board was powerless to intervene. It goes without saying that without the diagnosis, the situation would have been different.

I ask you, Mr. President, if you are standing in that classroom trying to teach those other students and a kid waves a gun around, at that point, do you really care specifically what his problem is? When somebody walks into a bank and waves a firearm at a clerk, at that point in time, are we really concerned about how difficult his or her childhood may have been, or are we concerned about dealing with the now, what is of utmost urgency, and that is the violence that is pending, immediately and then deal with the other problem? Doesn't that make more sense, I say to my colleagues? That is all Senator GORTON is trying to do. That is all his amendment does.

If you read on page 157 in the bill, basically what it says is that if you have that student waving that gun, you can get that student out of the classroom, according to the Federal Government now dictating to the school district. You can get the student out of the classroom for 45 days. That is very nice that the Federal Government and the Senate and the House and the President have given the school districts a directive that, yes, if you have a kid waving a gun around in Mrs. Jones' class, let's say in the sixth grade, you can take the kid out of school for 45 days. That is very good of the Federal Government to allow that to happen. I applaud them for letting that happen.

In addition, to show the kindness of the Federal Government even more, if you provide an IEP, an individual education plan, for that student who is waving a gun around—you have to do that—you have to provide that help for this student while he or she is out for 45 days and then, after the 45 days, you have to bring the student back into the classroom again. Now, that is real nice for the Federal Government to get into that kind of micromanaging.

As a teacher who has the responsibility for educating the students and, in this particular case, the safety of the students, we need a better way. I do not want the Federal Government to make that decision. I want the teacher on the spot, the administrators on the spot to get that student out of the classroom and to find out whatever the problem is. If it is a medical problem, fine, then deal with it as a medical problem outside the parameters of the school district. The school district is not a hospital, it is not a social service agency, it is an educational institution, and we have lost sight of that. Everybody in America knows it, the school districts know it, the students know it, in some cases.

I believe honestly that without this amendment we will eventually be forced to revisit this problem. This is not going to resolve the problem despite our best intentions. We are going to be sending the message that the Federal Government is not a help but an impediment to efforts to provide students with a safe learning environment. By sending that message, we will give citizens who want safe schools for their children reason to doubt that the Federal Government considers their concerns worthy of serious attention.

I do not believe we should send that message, Mr. President.

Throughout this debate, we have heard that any successful effort to amend this bill, no matter how worthy, is going to imperil the entire legislation. I ask my colleagues to think about that for a moment. How does it imperil this legislation to say to a local school district, if you have somebody waving a gun around in a classroom, or doing drugs in a classroom, or in other ways disrupting the classroom, how does it imperil this legislation to say that we want to add an amendment on this bill that says that the school district, the teacher, the principal, the enforcement official, the police department, whatever it takes in that local community, should be able to address that problem as they would if any other student were causing it. Deal with the other problems, the problems behind this incident later, but get the child out of the classroom. That is all Senator GORTON and I are asking with this amendment.

It is not unreasonable, Mr. President. Schools should not be forced to adapt their own behavior policies on the basis of IDEA. This is a reasonable amendment. I encourage my colleagues to search their conscience, in spite of the effort to stop all amendments, in spite of the effort to say this will destroy the bill, I plead with my colleagues to support the Gorton amendment because of the reasons I have given.

Bear in mind, we all understand the rules, we understand the constitutional provisions of what we do in the Senate. We all understand that if a bill is defeated, it can be defeated because the President vetoes it, it can be defeated because the Senate or the House defeats it, but in this case, if the Senate passes it with this amendment and the House passes it with this amendment, who knows, the President may sign it with this amendment. We do not know the answer to that. And if he does not sign it, we can override his veto, and if we do not override his veto, we go right back to where Senator JEFFORDS is now. So what have we lost? A little time, that is all.

But I guarantee you, if you talk to those teachers out there in those inner cities and other locations where these kinds of things are happening, it would be very interesting to hear their remarks in terms of how they feel about this.

Let me close by saying, again, I understand and respect what Senator JEFFORDS is trying to do. This is an advancement of current law in the right direction. I applaud that and support that, but I resent the fact that we cannot make an attempt, where there are deficiencies overlooked, where we are denied the opportunity to make the attempt to reform them because we are going to ''undo'' some compromise on the legislation.

Mr. President, I yield the floor and reserve any time I have.

Mr. REED. Will the Senator yield?

Mr. SMITH of New Hampshire. Yes.

Mr. REED. If I may, I would like to comment on the bill in general and the Gorton amendment specifically, if the Senator will yield?

Mr. SMITH of New Hampshire. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Six minutes.

Mr. SMITH of New Hampshire. I see no people on my side. I yield the remainder of my time to the Senator from Rhode Island.

Mr. REED. Mr. President, I thank the Senator for his gracious efforts.

I rise today to support the reauthorization of the Individuals with Disabilities Education Act, and also to oppose the proposed Gorton amendment.

This legislation represents remarkable progress to date, building on progress in the last 20 years with respect to IDEA. In 1975, when IDEA was first passed, 1 million children were excluded from the public school system and another 4 million children did not receive appropriate educational services.

Working in a bipartisan manner years ago, Congress passed IDEA, creating a situation in which all children are entitled to a free appropriate public education.

IDEA has made a real difference in the lives of children throughout this country. Over 5 million children from birth through age 21 are now enjoying the benefits of the Individuals With Disabilities Education Act, and it has made a real difference. Indeed, the number of children with disabilities entering college more than tripled during the period between 1978 and 1991. The unemployment rate for those individuals with disabilities in the twenties is half that for the older generation. Simply put, IDEA demonstrates the positive and powerful role that Congress can play and has played. Today's bipartisan and bicameral effort builds on that great success of the last 20 years.

I commend particularly Senator LOTT, Senator HARKIN, Senator KENNEDY, Senator JEFFORDS, Senator FRIST, and Assistant Secretary for Special Education and Rehabilitative Services, Judith Heumann, for all of their efforts in leading this reauthorization process.

In March, I went up to Rhode Island and met with many of the teachers, administrators, parents and families who are deeply involved and deeply concerned about special education. We talked to them, we got their ideas, and I am very pleased to say this legislation incorporates so many of the important ideas that they expressed to us.

For example, this legislation promotes greater parental participation by providing parents with regular reports about the progress of their children. It also includes parents in group placement decisions which is so critical to the success of their child. This legislation strengthens the individual education plan, the IEP, by including children with disabilities in school reform efforts and also ensuring that performance assessments includes all children, including children with disabilities. All of these efforts will strengthen the education that is provided to these young Americans.

In addition, this legislation strengthens and emphasizes early intervention services which are absolutely critical. In my home State of Rhode Island, we screen every child for disabilities and follow through with those children. People up in Rhode Island speak with great conviction and passion about the success of this aspect of the IDEA bill, and we are building on that success today.

This legislation also reduces the paperwork and the litigation that we have seen in the past and strengthening and emphasizing mediation and reconciliation processes rather than going to immediate litigation. Indeed, it also requires that complaints be specified so that we don't get into an endless litigation process. All these things together add, I think, to the sensibility and the streamlining that this legislation represents.

With respect to the amendment before us at the moment, it would undercut, I think, most of the progress we have made to date in this reauthorization. It would essentially undercut all of the specific goals and objectives that we have laid out carefully after considering this legislation. It would also, in a sense, undo so much of what has been done so positively and progressively by all parties coming together to deal with this legislation.

To defer, once again, to local control I think is to invite what took place before IDEA, not because of insensitivity or any maligned intent, but the fact is, quite frankly, that millions of children with disabilities did not receive an appropriate education. It was only with the passage of IDEA in 1975 that we committed ourselves to ensure that every child, including those with disabilities, would have an appropriate education.

This is the commitment we continue today. This is the work of many months by my colleagues who worked so diligently. I hope today we not only will reject this amendment but that we will overwhelmingly reaffirm the work that has been done, pass this bill, move it forward, let the President sign it and let us build on more than two decades of success and, once again, reaffirm our commitment that in this country, every child, regardless of their abilities or disabilities, will have a free appropriate public education.

I thank the Senator and yield back the remainder of my time.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Vermont.

Mr. JEFFORDS. Mr. President, we are coming to the end of the discussion on this amendment. It is my intention to have it set aside. I would like to point out that this is not just JIM JEFFORDS versus the cities and towns of America, as Senator GORTON stated. He indicated that the teachers wouldn't like it, but actually, this bill is backed by the National Parent Network on Disabilities, the AFT, and the NEA. It also has the support of the American Association of School Administrators, the National Association of Developmental Disabilities, the Council of Great City Schools, the National Association of Elementary School Principals, and 32 other organizations representing millions of people. I urge everyone to vote against the Gorton amendment.

I yield back the remainder of my time and I ask unanimous consent that the Gorton amendment be set aside temporarily.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of New Hampshire addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Hampshire.

Mr. SMITH of New Hampshire. Is the pending business now the Smith amendment?

The PRESIDING OFFICER. The Senator has not called up his amendment yet.

AMENDMENT NO. 245

(Purpose: To require a court in making an award under the Individuals with Disabilities Education Act to take into consideration the impact the granting of the award would have on the education of all children of State educational agencies and local educational agencies.)

Mr. SMITH of New Hampshire. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself and Mr. GORTON, proposes an amendment numbered 245.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 156, between lines 8 and 9, insert the following:

''(I) LIMITATION ON AWARDS.—Notwithstanding any other provision of this Act (except as provided in subparagraph (C)), a court in issuing an order in any action filed pursuant to this Act that includes an award shall take into consideration the impact the award would have on the provision of education to all children who are students served by the State educational agency or local educational agency affected by the order.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that with respect to the amendment offered by Senator SMITH, there be 1 hour for debate, equally divided between Senator SMITH and myself. I also ask unanimous consent that no second-degree amendments be in order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I appreciate the Senator from Vermont working with me on this amendment. I do not intend to use the full 30 minutes on my side. If it helps to yield back some time on both sides to expedite things, I am more than pleased to do that.

This, again, Mr. President, is another opportunity to strengthen this bill. Like the Gorton amendment, it is just a commonsense amendment that simply underlines a commitment to fairness and equity that I believe every Member in this body shares. My amendment would require a court making an award under the Individuals

With Disabilities Education Act to take into consideration the impact the granting of the award would have on the education of all children in that State or locality.

The problem that the Smith amendment addresses is a very real one. Again, talking with school boards, having served on a school board, I can tell you that litigation costs are consuming a lot of resources that would otherwise be dedicated to education services or infrastructure development.

In one instance, a school district was forced to pay $13,000 in attorney's fees as a result of a dispute over less than $1,000. I simply ask my colleagues if that is reasonable.

I ask unanimous consent that Senator GORTON be added as a cosponsor to my amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SMITH of New Hampshire. Mr. President, Senator GORTON, in discussing his previous amendment, which did not relate directly to attorney's fees, has provided me a copy with some of the litigation costs in various school districts in his State of Washington. I will not go through them all, but if you added all of the litigation costs up in 1 year, the 1994–95 school year, it would be almost $1 million in litigation costs just on special education, $330,000 in Seattle, alone.

Now, if you add up all of those thousands and thousands of dollars and you end up with a total in excess of $1 million, if you are a teacher or an administrator or a private citizen thinking of your own school district, you might ask ''How many teachers, how many textbooks, how much infrastructure could you provide for $330,000?''

We have an adverse reaction around here when we try to get anything done to knock any attorneys out of a dollar or two. There was a Washington Post story recently quoting lawyers bragging—and I will not cite names here, I do not think that is important—but there was a law firm in the city that got $2.4 million, according to school budget records, just on special education, just on this law. In fact, one person was quoted as saying, ''Winning those cases is like taking candy from a baby.''

I might just say, why is that? Well, I took the time, Mr. President, to talk to my school districts—not all of them, but I wrote to them and got a lot of input back and attended some school board meetings. I attended school board meetings, about one a week for 6 years, when I served on the school board in another life before I came here to Congress. Believe me, I have heard a lot of reasons and a lot of things about what is wrong with this law as well as what is good with it. We know there are good things about it.

The Manchester school district, which has 100,000, roughly, citizens—not 100,000 students—a district of a little over 100,000 people, pays litigation costs on this issue alone of between $110,000 and $125,000 every year. That is the cost of three teachers. This may be justified, but sometimes it is not, is the point I am making.

Using the example I cited in my last speech of the youngster with a gun in the classroom, if somebody determines that youngster must have an individual education plan, and the school district says, ''Now, wait a minute. Hold on. This kid has disciplinary problems. He does not have medical problems. He has disciplinary problems. We want to discipline him. We want to get him out of this classroom.'' But somebody disagrees. Maybe the parents, maybe somebody representing the parents, maybe the Civil Liberties Union—whoever—but somebody disagrees. So sometimes when the school district looks at the ramifications, they think, ''Well, if we go to court and fight this and lose, it could cost us $300,000. If we give in and we cave in and say, 'Well, OK, the kid is waving a gun around, he must have a medical problem somewhere, something is wrong, he is waving a gun around a classroom, we need an IEP,' we might as well cave in because that will cost $100,000, and it is better to pay $100,000 than $300,000.''

That is exactly what happens, Mr. President, over and over again, year after year, district after district, all over America. They simply throw up their hands and look at it simply on the basis of a bottom line. ''If I go to court and I lose, I will owe $300,000 in legal fees. If I go to court and win, maybe I will not owe them. But if I lose I will have to pay, and for the sake of $100,000 IEP, knowing that the legal fees' estimate may be three times that, why, then, would I take the risk?'' That is exactly what happens, Mr. President. I have sat as chairman of the school board and seen it happen and participated in those decisions. They were bottom-line decisions.

Now, let me tell you why this hurts children in those schools. Maybe I am mistaken, but I think we are trying to reform this law because we want to help students get a better education. Now, the question you must ask the question you might want to ask is: Is it fair to provide this kind of education, this kind of alternative, at the expense of other students? If it is going to cost $300,000 to go to court, then I have to think, if I am a school board chairman, well, how about the other kids? What happens to them? Let me tell you what happens: Those dollars go to the lawyers. That is what happens. And we are letting it happen.

I thought the point of a civil rights law was to protect people from discrimination, especially minorities, not to provide minority group members with benefits not available to the rest of us. That is what I thought. Maybe I am somehow mistaken in that regard.

So, all my amendment does, all it does, is it simply requires a court, in making an award under the IDEA legislation, to take into consideration the impact the granting of that award would have on the education of all the children, all the children, in the school district—not just one, all of them.

I might say to you, is it fair to take education away from kids who want it, who need it, who deserve it, who ask for it, for the sake of someone who is a discipline problem? Not someone who has a handicap or someone who has a need. I want to make that clear, because I will be accused otherwise. That is not what we are talking about when we talk about kids who have legitimate needs. We are talking about these outrageous individual education plans that are written, and the outrageous examples of the kind that I gave you, a kid is selling drugs on the school ground, you have a kid waving a gun in the classroom, you have a kid shouting obscenities in the classroom, and instead of worrying about getting the kid out of there and out of that environment which is destroying the educational opportunities of other students, we are worried about what the background is, what the reason is for it. There is a justification for finding out the reason, but get them out of the school classroom where these problems are occurring.

We are not talking about a child with Down's syndrome here or a child who is blind or deaf or who needs some special education to help that child learn. We are not talking about that. I voted for hundreds of thousands of dollars of taxpayer dollars to help those children as a school board member and as a Senator. I am talking about some type of reasonable restriction on outrageous legal fees that come right smack out of the pockets of those good kids, good kids who simply want to learn, those good kids and decent parents who say, ''You know, I am sending my child into school. I know the teachers are imperfect. We are all imperfect. We are human beings. I do not expect them to be perfect. I do not expect the school or the administrator to be perfect or the classroom environment to be perfect, but I am asking they be free from the threat of violence, they be free from the threat of drugs, free from the threat of outrageous outbursts of obscenities and other things that may cause an impact on my child or their child's education.'' That is all parents are asking. What is so unreasonable about that?

Who are we in the Federal Government or the U.S. Senate or the House of Representatives or the White House to tell the school district that they can't correct this? Who are we to do that? If you can find that in the Constitution, Mr. President, somewhere, anywhere, even implied, I will withdraw the amendment. It is not there. It is absolutely not there. We need to do something about it.

There was a principal from a school in New Hampshire who wrote to me saying that because of litigation costs, ''funding of other regular education programs is being seriously jeopardized.'' He describes himself, this principal, as a member of a generation that

sought to extend equal opportunity to all. He concluded, with regret, that as a result of excessive litigation the IDEA has become ''a law gone crazy. The students that are disadvantaged now are the regular education children.''

I include in regular education children those who have a disability, who need help. Let me repeat that: I include in regular education, children in that category, those children who have a special need, who need extra help—not the ones that are causing these problems that are so outrageous in these classrooms.

I wish I could say this was just one mere anecdotal example out of millions and that it was not a big deal, but it is not. A study that was conducted by the Advisory Commission on Intergovernmental Relations shows that the IDEA is the fourth most litigated law in its study of unfunded mandates—unfunded Federal mandates. Is it any wonder that some lawyer from Washington, DC would say ''winning those cases is like taking candy from a baby?'' It is not.

I have talked to the school board members. They throw their hands up in the air. It is costing them money by the hundreds of thousands and millions of dollars, money that could be spent on educating, yes, the truly needy special needs kids, as well as the people in that classroom.

Again, for emphasis, I repeat what I said earlier. Can you imagine being in a classroom, as a teacher or as a student, with that kind of outrageous behavior occurring, and then knowing as a school board member that you have to tolerate it unless you want to break the bank with legal expenses?

So, basically, what this amendment does that I am offering, it simply allows the court to pull back on these court costs, to have the flexibility to say, look, $13,000 for a $1,000 IEP or $350,000 for a $10,000 IEP, those kind of fees are outrageous. They are not going to be tolerated because we are not going to let some lawyer who wants to fatten his wallet do so at the expense of decent children in some school district in Anywhere, USA, from having the opportunities of getting what he or she deserves in that classroom.

That is wrong, Mr. President. That is absolutely wrong to let that happen. Yet, it is happening and we are encouraging it to happen. We are encouraging it to happen because we have some deal struck that no one wants to break and, therefore, we can't offer an amendment. ''Yes, you can offer an amendment, Senator SMITH, but everybody is going to oppose it. If you get five votes, good luck.'' Well, I just ask the American people to look very carefully at the votes, frankly. Those of you out there in the school districts around America, look at who votes on the Gorton amendment and Smith amendment and see whether they are there for you or not, because that is what it amounts to.

I don't care what anybody tells you on the floor of this Senate, it is absolutely not true to say that this bill will be defeated if this amendment passes or the Gorton amendment passes. That is not true, because it can be defeated here and the President could veto it, but we can override the veto. That is the constitutional process.

The need to address the problem of litigation costs seems all the more pressing at a time when some of my colleagues have begun calling for the Federal Government to take over the job of building and maintaining the schools from State and local governments. They want to take it over. Can you imagine that? The U.S. Senate, in this vote, is going to use the power of the Federal Government to prevent you from getting that child waving the gun or using the drugs out of the classroom but that same Federal Government is going to take over the job of maintaining school buildings. Can you imagine that?

Do we really want to do for public schools what we have done for public housing? I think some do. I don't. Perhaps we in Congress would do better to ease the burdens of excessive regulation and litigation so that States and localities can devote more of their resources to repairing or replacing crumbling school buildings.

You know, it might be a good idea—I hadn't thought of it; it just came to mind—when the lawyers get the big fat settlements or legal fees by winning these cases, which they take with great glee—''like taking candy from a baby''—maybe we ought to have an amendment that says they ought to give 90 percent of it back to the school district. Maybe they get an IEP or two for some of these kids that really need it. But that would be wrong. That is in violation of capitalism, I guess, isn't it?

Well, all you have to do, Mr. President, is look and see where all the money goes from the legal community and who they are giving it to. There are a lot of lawyers in here and they do pretty well. So it is tough to beat the lawyers in this body.

I ask my colleagues simply to search your consciences, read the two amendments, the Smith and Gorton amendments, read what they do and ask yourself, is it the end of the world if this passes and this bill takes a few more weeks running through the process of getting changed? That is all we are asking. If the process around here is to strike a deal before we get stuff to the floor, I am going to be the first Senator out on the floor the next time that somebody who votes for this bill says, ''I would like to offer an amendment.'' I am going to say, ''Excuse me, why are you offering an amendment? I thought we had a deal here. Isn't that the way you want to govern—strike the deal before you bring the bill to the floor so nobody can make any amendments?''

This amendment would make this legislation a responsible piece of legislation if we were to pass it. That is all I ask. I am not asking for anything else. I am asking for the Senate to adopt this amendment to strengthen this bill, to take money out of the pockets of lawyers and put it into the educational opportunities of young girls and boys throughout this country. That is all my amendment does. If you want it in the pockets of lawyers, vote against me. If you want it to be spent for the schoolchildren, then vote for me. That is it, pure and simple.

Mr. President, I will reserve the remainder of my time and yield the floor.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Smith amendment. I will not go into all I have said before about why that is necessary. But the House today has completed debate of a version which is identical to the bill before us, and any amendment to it would require us to go to conference. The delay would give time for those who are opposed to the bill to try to scuttle it, as they did last year successfully.

I want to point out several things with respect to the Senator's amendment. First, it is not necessary. Under the bill as written, there is no award for legal fees without the courts saying there should be; it's purely discretionary. The courts, with their discretion, can take into account the effect of the award on the school districts, or whomever else. So there is that ability to try to reduce the awards. It is in there now. The amendment is also not necessary, because mediation is working. Due to changes in the approaches that have been taken, the cost of litigation and the number of court suits that have been brought as a result of appeals has gone way, way, way down. So we are talking about something that used to be a problem but is not a problem anymore.

As I pointed out before in addressing Senator GORTON's amendment, I think he is talking about the State of Washington of old, not the State of Washington of the present. In fact, given the dramatic success with voluntary mediation in Washington State and given the success and cost-benefit advantage associated with voluntary mediation of 38 other States, the bill requires all States to offer voluntary mediation.

So the bill is going to try to help replicate what happened in Washington, which has decreased the number of appeals so substantially—a 96-percent decline in due process hearings held between 1993 and 1996. It is a problem of old. We can forget about it.

As far as the comments about waving the gun and there being no remedy, that is not accurate. If a child's behavior is not connected to a disability, then he or she is treated like any other child except that there can be no cessation of services. So that certainly takes care of that. If the behavior is related to the disability, the child can usually be removed for not more than the amount of time that the school system would remove a child without disabilities but for not more than 45 days. If at the end of 45 days the school

personnel propose to change the child's placement and the parents disagree with the proposal, the child must return to the placement prior to the interim placement except if the school personnel maintain that it is dangerous to do so and make a demonstration to the hearing officer that this is so. And that could go on until there is no risk.

The best way to help the communities is to vote for this bill. It is important to understand that, if we increase IDEA funding—and that is the effort this body and its Republican Members are putting their full weight behind—all that increased funding will not go to States. Rather, it will flow to the local governments. So, if you want to help local governments take care of problems—and sometimes there are problems—this money going directly to them will assist them more than anything else. The States can't pick any of it off. It goes right to the local government. So I just emphasize that, in my mind, we have taken care of the problems. We are, again, in the position of considering an amendment which could be seriously disruptive. If adopted, it will have no impact on solving real problems, but it would raise the possibility of killing the bill.

Let me give you an idea about the lawyer's fees and the history of that and let you know exactly what has to occur before you can get an award. There was a case called Smith versus Robinson in 1984. This was a case that came to the U.S. Supreme Court. They went through it and found out that, actually, there was no ability to award attorney's fees. So we went into the 1986 session and said there ought to be an award for some under certain circumstances, but we should make sure that it is not in any way automatic and is purely at the discretion of the court. Let me read some of the phrases:

In any action or proceeding brought by IDEA, or the parent or child with disability against the school, the court may award reasonable attorney's fees.

''May.'' That is discretionary. They could take into consideration everything Senator SMITH wants them to. There is no limit on the discretion. Also:

Attorney's fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent, and if they had a good deal and didn't accept it, they don't get attorney's fees.

Attorney's fees may not be awarded related to any meeting of the IEP team unless such meeting is convened as a result of administrative proceeding or judicial action or at the discretion of the State or a mediation is conducted prior to the filing of the complaint.

I can go through more. I think you get the drift. It is very hard to get attorney's fees. Therefore, that is really not the problem. Plus the mediation process has reduced almost to zero the number of court appeals—only a hundred all last year. I think we are talking about solving a nonproblem and creating a huge problem with respect to the possibility that this bill might be, as happened last year, scuttled at the last minute.

I retain the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SMITH of New Hampshire. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 10 minutes. The other side has 22½ minutes.

Mr. SMITH of New Hampshire. I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SMITH of New Hampshire. Mr. President, I yield the remainder of my time.

Mr. JEFFORDS. Mr. President, I yield as much time as the Senator from Iowa desires.

Mr. SMITH. Then I will yield the remainder of my time to the Senator from Vermont.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Thank you, Mr. President. I don't intend to take a long period of time. I wanted to respond to my friend from New Hampshire. Let me, first of all, recap a little history on the provisions in the bill which provide for reasonable attorney's fees—again, keeping in mind you have to prevail in this case.

The provision here, what is in the bill, is nothing new. This has been in the bill for a long time. In fact, I did a little bit of research and found out that this first came under S. 415, the Handicapped Children's Protection Act of 1986. And the person who was in charge of this provision was none other than our own Senator ORRIN HATCH of Utah. I just thought I would read into the RECORD, again, what he said at that time on July 17, 1986.

He says that the agreement we are now considering is a compromise which I feel accomplishes two major objectives.

First, it provides the reward of reasonable attorneys' fees to prevailing parents in Education of Handicapped Act proceedings.

Second, it includes the application provisions from some court cases, which he mentioned, which I don't have to go through.

In order to protect against excessive reimbursements. Senator HATCH goes on to say, ''Let me again emphasis that the conference agreement developed was a compromise. Without the passage of this carefully crafted document, handicapped children and their parents cannot be fully protected since they have no recourse under current law, if their rights are violated.''

Again, that law now provides that a court may award reasonable attorneys' fees as part of the cost of the parents of a child with a disability who is the prevailing party in a due process proceeding, or court action.

In other words, if a parent prevails at an administrative hearing, they are entitled to fees. What fees? Reasonable? They must be based on rates prevailing in the community for that time, and quality of services performed. Unlike other civil rights statutes, no bonus or multiplier may be used to increase the amount of fee awards. No award of fees may be made for services performed subsequent to the time a written statement offer is made to the parents, if, among other things, the relief finally obtained by the parent is not more favorable to the parents than the offer of settlement.

I think this is really a critical point. Again, I apologize to the Senator from New Hampshire. I do not know if he covered this or not.

Let's say they have a written statement of offer to settle. The parents decide not to do that, and they go on. From that point on, if the final judgment is not more favorable than the written statement offer, they get nothing beyond that point. They go at their own peril.

So, again, how can that be unreasonable attorneys' fees?

And the court must reduce the amount of the fee award whenever the court finds the following:

First, the parent unreasonably protracted the final resolution;

Second, the amount of fees unreasonably exceeds the hourly rate prevailing in the community;

Third, the time spent on the legal services furnished were excessive considering the failure of the action or proceeding.

So this is all in current law—adequate protections to make sure that there are not unreasonable attorney fees in these cases.

So really this amendment offered by the Senator from New Hampshire really undermines the rationale for having attorney's fees.

Again, let's keep in mind one other very important fact that I think keeps being ignored here when we are talking about IDEA. The Individuals With Disabilities Education Act is a civil rights statute. It talks about civil rights for kids with disabilities. I already went through that earlier today talking about not discriminating on the basis of race, sex, creed, or national origin. Well, the courts have now said disability too. You can't discriminate on that basis.

I have here a copy of all of the statutes under which attorneys' fees may be awarded by Federal courts and agencies in other civil rights cases. The Civil Rights Act of 1964; Public Facilities; Equal Opportunities; Fair Housing Act; title 8; Employment Act of 1967; Fair Labor Standards; Voting Rights Act of 1965; the Equal Credit Opportunity Act; the Age Discrimination Act; the Rehab Act of 1973. And all of

those we get reasonable attorneys' fees.

So now are we going to say, ''But, for the civil rights of kids with disabilities and their parents, no, that is different''? Why don't we carve out the Civil Rights Act of 1964, or public accommodations on the basis of race or color? Why don't we say, ''Well, if you have a civil rights case and it is based on race, you don't get attorneys' fees, if you prevail?'' Why not? The Senator from New Hampshire says we will carve it out for kids with disabilities. Why don't we carve it out on the basis of race?

How about religion? What if you got a complaint based upon violations of civil rights based on religion, and you prevail? You say you don't get attorneys' fees? No. We say in the law you get attorneys' fees, if you prevail.

Equal employment I mentioned.

Title IX dealing with discrimination based upon sex, we say, ''Oh. Well, in this case, however, if you are female, your civil rights have been violated under title IX, and you bring action. No. We are not going to give you attorney's fees.''

Why don't we have those amendments offered around here? It is only the kid with disabilities. It doesn't make any sense at all.

So let's keep all of our civil rights laws the same. If your civil right is violated on the basis of race, I submit to you it is no more onerous than if your civil rights is violated based upon disabilities. And we shouldn't discriminate under the Civil Rights Act, and we shouldn't here either.

So I oppose the amendment because it undermines the rationale. It subjects the parents of children to a double standard compared to other civil rights bills. We have to keep these things the same.

Last, the data doesn't support the assertions that the fee is a result of proliferation of litigation. I looked up New Hampshire. For 1 year—1995–1996—New Hampshire had 10 complaints that went through due process. Do you know how many become court cases? Zero. This is an amendment looking for a problem.

There is no problem out there. Vermont has zero. Arkansas has zero.

Again, it is just not a big problem out there at all.

In my State—I might as well talk about Iowa—we had four due process hearings, and we had three cases go to court.

Out of the thousands—this is what is interesting. In California, one of the largest States, we had 1,289 requests for due process hearings. Out of that, 1,114 were disposed in mediation. We had 57 hearing decisions rendered out of 1,289 requests. That is just not much of a problem. That is out of 550,000 students in California receiving special education. Out of 550,000 students, only 57 had a hearing decision rendered.

So, again, the number of due process hearings per year averages about one-hundredth of 1 percent of the number of children served. The law specifically provides for reasonable attorney's fees, and I just outlined what that means when Senator HATCH put this in the bill 11 years ago.

And, third, we would not—no one here, I would think—would want to discriminate on the basis of civil rights that in one civil rights case you get attorneys' fees but in another civil rights case you don't. No. We don't want any of that around here. For those reasons, while I have every respect for the Senator from New Hampshire—and he is a good friend of mine—this is just a bad idea, quite frankly. And I hope Senators will reject this approach of trying to divide out kids with disabilities and their families away from everybody else under the purview of civil rights laws.

Mr. President, I yield the floor.

Mr. JEFFORDS. Right now I would just like to say a couple of things. I think it is very clear that both of these amendments are not necessary—in fact, would create problems rather than solve them, and that what we have is a bill which, if we are able to pass, will save money. That has not been mentioned, but the estimates are it will save up to $4 billion a year in reduced litigation and all of the other problems that are inherent in the process as well as the fact that both amendments are trying to solve problems that are no longer there. In fact, the Gorton amendment will create a monstrous problem and solve none.

Mrs. MURRAY. Mr. President, I rise today to send a message to parents and educators across this nation. No matter if they are the parents of a disabled child, or the superintendent of a rural or urban school system, each one of them will have something to be pleased about in the 1997 reauthorization of IDEA. As with most legislation, no one is completely happy with every paragraph and clause. And yet, with issues so complex and needs so great, I find it remarkable that we have before us such a potentially successful bill.

It is testament to the work we have done over the past 2 months that we have brought the discussions over the past 20 years of IDEA to a productive next step. I have always believed that we do our best work when we agree to sit down, put differences aside, and work toward the common good, using common sense. This is exactly what the American public expects us to do. The negotiations over the IDEA bill represent this philosophy and put it into action.

I want to congratulate Senators HARKIN, KENNEDY, LOTT, JEFFORDS, and FRIST for all the great work they and others have done. I also want to thank the education community for working together through differences, to get to a bill that can pass and will work for students in regular education and special education in schools and communities across the land.

The Individuals With Disabilities in Education Act is 20 years old this year. It has represented a major change in the way our society views students with disabilities—and has helped us take concrete, measurable steps toward improving the lives and education of all American students.

In this process this year, it is my view that we have preserved the basic civil rights protections that were part of IDEA when it was passed, and that we have granted important flexibility to local schools and parents to work together in the best interest of children.

One thing evident from the process of writing this bill—we do a great job here in the Senate in cranking out pieces of legislation, but we must do more to monitor implementation of these laws. Practices in the field of special education have improved dramatically over 20 years; yet our methods of disseminating information—even in the information age—have not kept pace. Much of the disagreement in the classrooms and communities of America between special education folks and regular education folks is because we have let the ball drop on implementation of IDEA. The sad part is that it didn't have to happen—the information was there.

Information about how much more effective it is to use mediation as an option to legal action. Information about what strategies of communication, teaching, and problem-solving can be used to prevent situations from escalating to the point where they need mediation. In places where people have good information, and exercise leadership, you just see fewer problems.

It has been obvious for some time to educators and parents alike that—as with other Federal laws—there is a wide variety in what special education means from community to community. Some of this variety is as it should be. Decisions about how educational services are delivered are best made with local flexibility. But basic protections afforded by civil rights law, and effective techniques that improve student learning, should not be subject to the whims of geography.

The IDEA reauthorization legislation recognizes this, and makes several changes that will benefit all students and members of their community.

First, the new law codifies court decisions, regulations, and other interpretive documents so that the law itself better reflects its current uses.

Second, the law improves educator training, methods for sharing information, and improves the process for developing and using the individualized education plan—the key to disabled students getting the services and challenges they need.

Third, practices to achieve safe and well-disciplined schools have been improved or more clearly articulated in the bill—so it will be clear that students whose behavior causes disturbance in the classroom will get help if that behavior is part of their disability, and if the behavior is determined

not to be part of their disability, they are subject to appropriate disciplinary action.

This bill represents improved results for all students in our schools. It ties a student's individualized education plan to the educational goals and assessments for nondisabled students—so we set high expectations and provide clear opportunities for achievement. The bill includes parents in decisions regarding placement, because we recognize that a child's needs are uniquely the concern of her or his parents.

This bill will serve as a vehicle to increase funding for IDEA, so the Federal Government can meet its obligations to disabled students. The bill holds outside agencies responsible for their share of the health or other costs of serving disabled students, so we can clarify that local schools do not bear all responsibility for these costs.

People from different perspectives will find things to praise in this bill. Perhaps the best thing is that we will reauthorize IDEA this year, so people can predict what the future will hold, and have access to more and better information. The tension in this country between regular education and special education has boiled for too long. This IDEA reauthorization bill will not pit people against one another; it will bring us together in service to all students.

IDEA

Mr. WELLSTONE. Mr. President, at a time when communities are demanding that schools provide quality education; at a time when many schools talk of scarce resources; at a time when parents ask that their children's schools be safe and orderly places to learn—it is easier sometimes to find a scapegoat than to address the real problems. I am greatly concerned that the scapegoat has become children with disabilities. Even though they have only had the right to an education for 22 years—I have heard over and over again that it is those children who gobble up scarce resources and who prevent other children from receiving a decent education.

But I have heard from parents whose children have disabilities, I have met these children. They just want to learn. And the civil rights statute that we passed 22 years ago says that to not educate them is to illegally discriminate against them. But still, these students and parents are afraid that schools will retreat to segregation and separate schooling. We must listen to these voices of pleading and concern.

There are 100,000 children in Minnesota that are protected by this statute, and up to 200,000 parents. IDEA strives to keep these students in school in as normal an environment as possible because integration gives them the chance they deserve. What a noble goal. What achievements we have seen over the years since the law was written. The first generation of IDEA educated children are just now coming into their own in this country and I believe that we all benefit immeasurably from their developed talents and abilities. While there have been problems with IDEA, it is my belief that the problems stem not from the law itself, but from the enforcement and implementation of this law.

I know the bill we have before us represents a delicate compromise—and that any successful amendment has the potential to make the deal crumble. I have not come to the floor this morning seeking to change this bill. But I cannot vote for this bill without pointing out the trouble spots I see. The disability community has not had much time to fully analyze this bill. This is a fact that I mentioned in my letter last Monday to Chairman JEFFORDS and Senator KENNEDY, while asking them to postpone this markup.

A quick review of this bill shows that, at least among parents and students, the discipline section has raised the most red flags. There is a concern that a manifestation determination review will be a very difficult process for parents, particularly low-income parents who may not have access to psychologists and other professionals. Advocates are particularly worried about the courts being replaced by an administrative hearing officer because they may be appointed by an LEA, there are different rules of evidence and there is no assurance that they will be attorneys or appropriately qualified. Another concern raised by parents is how substantially likely to result in injury to self or others will be interpreted. Children with autism, Tourette's syndrome, ADHD or ADD and severe emotional disturbances are especially at risk.

And last we need to ask where children will be placed—what alternative placements are available? If the primary alternative is home-bound placement we will see families facing incredible stress and financial hardships. If the primary alternative is a segregated setting we run the risk of returning to a system that offered minimal education to children in isolated, warehouse-like settings.

That said, I would like to congratulate the leadership team that assembled this bill in marathon sessions for the last 8 weeks. On February 20, 1997 a bipartisan, bicameral working group was established to develop a compromise bill. This working group included a representative from the Department of Education—Judy Heumann, Assistant Secretary for Special Education and Rehabilitative Services—and the following offices: Harkin, Kennedy, Dodd, Jeffords, Coats, Frist, Martinez, Scott, Miller, Goodling, Riggs, and Castle. The facilitator of the group was David Hoppe, the majority leader's chief of staff. A member of my staff was intimately involved in this process, and by his and all accounts this was an impressive display of bipartisan negotiation.

The first work product of the group was a statement of principles. The major goal of the working group was to review, strengthen, and improve IDEA to better educate children with disabilities, and enable them to receive a quality education. With this goal in mind, the working group agreed to start with current law and build on the actions, experiences, information, and research gathered over the life of the law, particularly over the past 3 years. The group met for 7 weeks, often for 12 hours a day, to reach an agreement that all could support.

I believe that the bill improves current law in several ways. The bill includes significant increases for the IDEA preschool program and significant increases for the early intervention program under part H.

The final agreement significantly improves and strengthens the Individualized Education Plan [IEP] by, among other things, relating a child's education to what children without disabilities are receiving and providing report cards just like nondisabled students receive. Of great concern to my home State of Minnesota, the bill retains short-term objectives which are planned goals in the education of children with disabilities that parents consider a crucial device for ensuring success and accountability. The bill also specifies that regular teachers will be part of the IEP team, where appropriate, and the report language encourages the participation of school health professionals where appropriate.

The new bill requires parents to be included in the group making placement decisions about their child, as opposed to current law, which in some States allows another group other than the IEP team to make placement decisions.

The new bill ensures that States and local school districts include children with disabilities in their performance goals, indicators, and general assessments. The bill ensures parental consent for triennial reevaluations—not just initial evaluations as under current law—and ensures that evaluations are relevant to the child's instructional needs.

The bill includes improvements in the early intervention program, including clarification that infants and toddlers should receive services in natural environments, such as their homes, where appropriate.

IDEA funding will now cover support services related to a student's disability. For example, the final agreement now lists orientation and mobility services for vision-impaired children as a related service—currently required by interpretation—and includes report language clarifying that children with disabilities should receive travel training—including how to use public transportation where it is deemed appropriate as part of their IEP.

The bill requires States to monitor school districts to determine whether they are disproportionately segregating minority children in certain placements and to determine whether there

is a disproportionate number of long-term suspensions and expulsions of children with disabilities.

The bill gives the Secretary and State educational agencies [SEA's] greater power to implement the law by providing authority to withhold all or some funds when schools violate IDEA. Currently, the Secretary is required to withhold all funds if there is a violation; this punishment was viewed as too strict and never applied.

The bill contains provisions to ensure that increases in Federal appropriations are not offset by State decreases in spending. The State maintenance of effort provisions give reasonable authority to the Secretary of Education to establish criteria for exceptions if necessary.

The bill codifies local maintenance of effort provisions from regulations and includes reasonable additional exemptions for when a locality need not maintain financial efforts for special education—for example when a teacher at the high end of the pay scale retires and is replaced by a recent graduate.

The bill reduces paperwork. State and local applications need be submitted only once and thereafter they need to submit only amendments necessitated by compliance problems or changes in the law.

Importantly, when it comes to discipline, the bill provides for no cessation of services for IDEA students, no separate IDEA provision on the treatment of disruptive children, and no unilateral authority to determine who is dangerous and remove them.

These improvements in the IDEA law do make a difference and I'm pleased that they were adopted. But the drawbacks I mentioned earlier hamper my enthusiasm for the bill. While I will vote for the bill today, I have chosen not to cosponsor this bill. I hope that Members will continue to listen to the voices of parents, who are faced with the daily task of raising and educating their children. They know firsthand how IDEA is implemented at the local level and thus we must listen to—and address—the concerns that they raise. Let us all remember who this bill is for, and strive to make it work for them.

Ms. MIKULSKI. Mr. President, I am pleased to join with my colleagues in cosponsoring this important legislation, S. 717, to reauthorize the Individuals With Disabilities Education Act [IDEA].

S. 717 is the result of a bipartisan effort, which included parents, special interest groups, and educators. My colleagues in both the House and Senate worked hard in crafting this legislation.

I believe that this bill will strengthen the current law. IDEA is a civil rights statute. It guarantees that every child with a disability has the right to a free appropriate public education. Public education is one of the core values of our country.

Before the enactment of IDEA in 1975, children with disabilities had little opportunity to receive a public education. Over 20 years later, IDEA has been successful in providing opportunity to children with disabilities.

S. 717 retains the principles outlined in the current law. There are five principles that IDEA encompasses: First, educational planning for a child with a disability should be done on an individual basis; second, parents of a child with a disability should participate in educational planning for their child; third, decisions about a child's eligibility and education should be based on objective and accurate information; fourth, if appropriate for a child with a disability, he or she should be educated in general education with necessary services and supports; and fifth, parents and educators should have means of resolving differences about a child's eligibility, IEP, educational placement, or other aspects of the provision of a free appropriate public education to the child.

Under current law infants and toddlers have the right to receive early intervention services and children with disabilities are placed alongside children without disabilities. Children with disabilities deserve no less than fair treatment.

Over 5 million special education students are served under IDEA. Decades of research have shown that educating children with disabilities is successful by having high expectations of special education students; strengthening the role of parents in the education of their child; coordinating State- and district-wide assessments; providing an education in the least restrictive environment; and supporting professional development for teachers who work with special education students.

I am concerned, however, about the disproportionate number of minority students who are identified as special education students. I support the goal of this legislation to provide greater efforts to prevent the problems associated with mislabeling and the high dropout rates among minority children with disabilities.

My State of Maryland will receive approximately $61 million this year to provide support services to over 100,000 students with disabilities in local school systems. I believe this legislation will help support my State's efforts to educate disabled children.

I support Federal funding for implementation of IDEA. I believe that funds should keep pace with student enrollment. This legislation maintains part of the formula in current law, which provides part B funds based on the number of children with disabilities served. Once a trigger of $4.9 billion is reached, which amounts to approximately $850 per child, a new formula based on census, 85 percent, and poverty, 15 percent, will apply to any new funds in excess of the appropriation for the previous year.

Although I have some concerns about how States will be able to implement and handle the additional administrative burdens under the new formula, I believe that this approach goes in the right direction.

S. 717 focuses on the crucial areas of increasing funding for special education, teacher training, and early intervention for children with disabilities.

This legislation reaffirms our country's commitment to educating disabled children. I urge my colleagues to support this legislation.

Mr. DODD. Mr. President, I rise today in strong support of the legislation before us today to reauthorize the Individuals With Disabilities Education Act. It is a strong, balanced bill. One that I am a proud cosponsor of and one that I believe we should all be proud to support.

Getting to this point has not been easy and I would like to thank our majority leader, Senator LOTT, Senator JEFFORDS, Senator KENNEDY, Senator HARKIN, and others for all of the time they have invested in putting together this strong and balanced bill and for assigning it such a high priority for consideration by the full Senate.

There has been a great deal of debate about this bill in the last several years. But one thing is very clear. In its over 20 years, IDEA has made an incredible difference to millions of American children, their families, and society as a whole.

Before the passage of this landmark legislation, children with disabilities were frequently excluded from schools, and some had absolutely no opportunity for education at all. Expectations for these children were low. Not only was great potential undervalued and lost, but also we lost as taxpayers who often picked up the tab for a lifetime of support. State and communities were struggling with increasing litigation and state court rulings requiring them to serve all children in the schools.

IDEA brought us all together—the Federal Government, States, local communities, schools, parents and students—behind a firm commitment, a promise to meet the educational needs of children with disabilities.

Since that time, we have made huge improvements in affording children with disabilities the same opportunities open to other students. Today, more than half of all students with disabilities go onto college and 57 percent of youth with disabilities are competitively employed within 5 years of leaving school.

These students go on to good jobs in every sector of our economy. Not only are they workers, they are taxpayers.

But the impact of IDEA is broader; it works for all students. Nondisabled students live, work, and learn alongside all the members of their community. Those are skills that over the long run make our whole society stronger.

Unfortunately, over the last several years, concerns have been raised about IDEA—concerns about cost of services,

discipline, the low Federal contribution, litigation and inclusion. There is no question, it has been a difficult few years. But we have something to show for all the debates and questions: this bill.

One thing has not changed in this bill—children with disabilities remain at its core. But in this reauthorization, we have improved IDEA to ensure that the law does not stand in the way of meeting children's needs.

Administrative requirements are clarified and streamlined. Discipline procedures, which have been the focus of so much attention, are modified to provided school officials with additional tools to ensure the safety of all children. Mediation systems to resolve disputes about the placements of children are required in each State. We also clarified that attorney's fees are not allowed during the development of the Individual Education Plan or in pre-complaint mediation. In addition, parents must provide school districts with more detailed information on their concerns to avoid protracted legal battles.

This bill also better defines the role of other partners in the effort to meet these special needs. Regular classroom teachers are clearly defined as part of the students' IEP team. The parents' role is strengthened or clarified. In addition, states have new authority to collect from noneducational agencies for noneducational services, such as speech therapy. The IDEA bill before us also provides new enforcement tools for the Department of Education to ensure that this law is properly implemented and enforced.

Beyond the larger issues, there were several issues of deep importance to me that I am pleased to see in this final bill. Language is included reaffirming the importance of braille instruction to students with visual impairments. The bill also reauthorizes a program providing support for an unique and wonderful effort, the National Theater of the Deaf. The Theater, which is based in Chester, CT, has traveled across the country and world inspiring and entertaining hearing and nonhearing audiences.

Mr. President, fundamentally, this is a good bill—a strong bill that will guarantee us the full potential of all of our children. I am hopeful that my colleagues will join me in strong support of this effort.

SECTION 685 COORDINATED TECHNICAL ASSISTANCE DISSEMINATION—NATIONAL CLEARINGHOUSES

Mr. BYRD. Under section 685(d) National Information Dissemination the first five authorized activities listed have traditionally been performed utilizing the services of the national clearinghouses.

The national clearinghouses, which have been in existence for over 25 years, have developed very effective, specialized and targeted lines of communications to State and local entities serving this population of special needs as well as to individual families. Representatives in my own State of West Virginia have communicated to me that they want to continue to be able to be serviced by these clearinghouses with whom they have developed longstanding and trusting relationships.

Does the bill continue to authorize all the activities currently carried out by the national clearinghouses?

Mr. HARKIN. Yes. The bill authorizes all the current activities and allows the Secretary to support national clearinghouses.

Mr. BYRD. I note in section 685 that the statutory language states—and I will paraphrase—that the Secretary should provide these authorized services utilizing ''mechanisms as institutes which include regional resource centers, clearinghouses, and programs that support State and local entities.''

I want to make sure that this language, even though somewhat general would allow the Secretary to utilize a Federal resource center, as well as regional centers. The Federal center provides a longstanding, vital, and supporting role in keeping regional centers supplied with and connected to the latest technical information and research development within this specialized field, in addition, the Federal resource center has traditionally coordinated some of the activities of the regional centers.

Does S. 717 allow the Secretary to utilize a Federal resource center in this role?

Mr. HARKIN. The bill allows the Secretary flexibility in the mechanisms used to provide State and local entities the technical assistance they need to improve results for children, youth, infants, and toddlers with disabilities. A Federal resource center is one mechanism the Secretary could use to carry out his responsibilities under this section.

TREATMENT OF PERSONS WITH DISABILITIES IN ADULT PRISONS

Mrs. BOXER. Mr. President, I would like to enter into a colloquy with Senators HARKIN and JEFFORDS regarding the treatment of those with disabilities who are convicted as adults and incarcerated in adult prisons.

Mr. HARKIN. I would be pleased to enter into a colloquy with my colleague, Senator BOXER.

Mrs. BOXER. As my colleagues are aware, the Department of Education has determined that the requirement that States provide eligible students with a free, appropriate public education extends to people under age 21 convicted of felonies as adults and incarcerated in adult prisons. Under current law, if a State fails to provide special education services to eligible prisoners, that State faces the loss of all Federal special education funding. I believe strongly that this mandate is wrong. I introduced legislation last week, S. 702, which would amend IDEA to exempt people convicted as adults and incarcerated in adult prisons.

This issue is particularly important to the State of California. My State does not provide special education services in adult prisons, and as a result, faces the loss of over $300 million in Federal special education assistance. It seems unconscionable to me that the needs of approximately 600,000 California special needs children could be jeopardized because my State does not provide special education services to an estimated 1,500 prisoners.

It is my understanding that this bill makes several significant amendments to these provisions and dramatically changes the scope of sanctions that can be imposed on States for failing to provide special education services to those incarcerated in adult prisons. Would the Senator elaborate on these changes?

Mr. HARKIN. Under the legislation, States are authorized to transfer the responsibility for educating juveniles with disabilities convicted as adults and incarcerated in adult prisons from State and local education agencies to other agencies deemed appropriate by the Governor, such as the State Department of Corrections.

Mrs. BOXER. What are the consequences of the transfer of authority in terms of the ability of the Secretary to withhold IDEA funds allotted to the State?

Mr. HARKIN. If a State makes such a transfer and if the Secretary finds that the public agency is in noncompliance, the Secretary must limit any withholding action to that agency. Furthermore, any reduction or withholding of payments must be proportionate to the number of disabled children in adult prisons under the supervision of that agency compared to the number served by local school districts. For example, if 1 percent of the disabled students were in adult prisons, the Secretary could only withhold 1 percent of the funds.

Mrs. BOXER. In the State of California, approximately one-fourth of 1 percent of all people eligible for special education are convicted of felonies as adults and incarcerated in adult prisons.

It is my understanding that under this bill, if California does not provide special education services in prisons it stands to lose only one-fourth of 1 percent of its allotted share. California would no longer face the possible loss of 100 percent of its allotted special education funds. I would ask the Senator from Iowa, is my understanding correct?

Mr. HARKIN. The Senator is correct that any withholding of Federal funds will be limited to the proportional share attributable to disabled students in adult prisons. Other funds would not be withheld.

Mrs. BOXER. I would ask the distinguished chairman of the committee, Mr. JEFFORDS, if he agrees that under this bill, States do not face the total loss of Federal special education funds for failing to provide special education services to those convicted as adults and incarcerated in adult prisons.

Mr. JEFFORDS. I do agree.

Mrs. BOXER. I am particularly troubled that under current law, States are required to develop an IEP for eligible students even if they have been sentenced to life without the possibility of parole or even sentenced to death. Would the Senator from Iowa comment on the authority to modify an IEP for such incarcerated individuals?

Mr. HARKIN. Public agencies may modify an IEP for bona fide security or compelling penological reasons. For example, the public agency would not be required to develop an IEP for a person convicted as an adult and incarcerated in an adult prison who is serving a life sentence without the possibility of parole or is sentenced to death.

This exception applies to those inmates for whom special education will have no rehabilitative function for life after prison. Our aim in assuring that prisoners receive special education is to make them better able to cope after prison, resulting in a safer environment for all of us. This goal does not apply for those who will not return to society.

In addition, the provisions requiring participation of students with disabilities in statewide assessments will not apply. Further, the transition services requirements will not apply to students whose eligibility will terminate before their release from prison.

Finally, the obligation to make a free appropriate public education available to all disabled children does not apply with respect to children and 18 to 21 to the extent that State law does not require that special education and related services under this part be provided to children with disability, who, in the education placement prior to their incarceration in an adult correction facilities, were not identified as being a student with a disability, or did not have an IEP.

Mrs. BOXER. Does the legislation modify in any way the responsibilities of adult prisons to prisoners with disabilities under section 504 of the Rehabilitation Act of 1973 or the Americans With Disabilities Act?

Mr. HARKIN. No, these laws still apply.

Mrs. BOXER. Does the bill make any changes to current law with respect to disabled students incarcerated in juvenile facilities?

Mr. HARKIN. No.

Mrs. BOXER. I thank the Senator for entering into this colloquy with me.

Mr. HARKIN. I thank the Senator for raising these important issues.

Mr. JEFFORDS. Mr. President, I would make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Reserving the right to object, I would like to just get us out of the situation we are in and then be happy to turn it over to morning business, if that is all right with the Senator.

Mr. WELLSTONE. I am sorry. Yes, of course.

Mr. JEFFORDS. I yield back the remainder of my time.

MORNING BUSINESS

Mr. JEFFORDS. I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak up to 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I yield the floor.

RELEASE WEI JINGSHENG

Mr. WELLSTONE. Mr. President, I rise today to ask the Chinese Government that the Chinese Government immediately release Wei Jingsheng, an extraordinary man who tells truth to power, authoritarian and arbitrary power. I meant to bring his book to the floor. It is being released today, May 13.

Mr. President, the publication date of this book is today. The title of the book is ''Courage To Stand Alone.'' I have very limited time, but I just want to say on the floor of the Senate, because I really believe there ought to be a focus on Wei Jingsheng, that this is a man of tremendous courage. I have had a chance to skim-read the book. I am going to read it word for word.

I know that Wei Jingsheng was in prison from 1979, I believe, until 1993. Then he was released, and then again he spoke out, as anyone should do, about the importance of freedom and democracy, and again he finds himself in prison.

Mr. President, I hope that my colleagues will all help me in calling for his release. I know Senator HELMS has signed this letter. So has Senator KENNEDY. I am very pleased to work with both of those Senators, and, in addition, Senator MOYNIHAN has signed this letter as well. We are going to add more and more signatures. We are talking about a man who is in very poor health. I just want to quote from Wei's outline of ''My Defense'' which was delivered at his trial on December 13, 1995.

> To sum up, the basic error of the indictment . . . is that it confounds the actions of defending human rights and promoting democracy and reform with ''conspiracy to subvert the government.'' Therefore, anything that can be linked to the ''Democracy Movement'' or ''human rights'' is an act of conspiracy and subversion. . . . A government that can be subverted by a movement of human rights and democracy can only be a government with a contradictory and opposite nature, a government that does not respect human rights or promote democracy, a government of ''feudal, fascist dictatorship.'' . . . According to our Constitution and laws, the people are the owner of this nation and the government is merely an agent of the people. The government must respect the sovereignty of the people, namely the individual freedoms and political rights of each citizen, including the right of people to know, the right to criticize and supervise the government, even to replace the government. If the government abolishes or suppresses such democratic rights, then it becomes an illegal government and loses its legitimacy, which is based on the Chinese Constitution. Therefore, if the general charges brought by the indictment against the human and democracy movement are valid, then the government it represents is not the legal Chinese Government and the charges it brings are illegal.

Mr. President, these are words that might have been uttered by Thomas Jefferson. I again want to just rise in the Senate today and call on all of my colleagues to stand up for Wei Jingsheng, this extraordinary man. He has now been sentenced to 14 years in prison under austere conditions that threaten his life. Today is the publication of the book, ''Courage To Stand Alone.'' This is a collection of Wei's letters to Chinese leaders, prison officials, and to his family.

He is a remarkable man, as I have said before. This is an extremely important work. He is eloquent. If you think about the conditions under which he has written these letters, it makes this all the more remarkable.

It is not only urgent that the Chinese Government release Wei, but also that it provide him with the medical care that he desperately needs but has been denied. He has a heart disease that threatens his life, severe hypertension, and a serious back ailment that renders him unable to hold his head erect. The Chinese Government ought to release this courageous man. He is a prisoner of conscience.

Today is the publication of a remarkable book, ''Courage to Stand Alone.'' Wei Jingsheng is a man who represents the very best of the tradition of our country. He is a man who has spoken up for human rights and democracy and has paid a terrible price for it. I believe it is important for all of us, regardless of political party, all of us in our country to speak up for prisoners of conscience. In this particular case, I take the Senate floor to call on the Chinese Government to release Wei Jingsheng from prison, to release him from prison today and to provide him with the medical care that he needs.

Mr. President, again, I hope my colleagues will join me in this effort. I hope my colleagues will have a chance to read this remarkable work, ''Courage To Stand Alone.'' I hope it becomes a best seller in the United States of America.

In the 30 seconds I have left, let me just say, personally I do not know how people find the courage. If I lived in such a country and I thought that by speaking up I could wind up in prison, or even worse, that my children could be rounded up and that they could end up being tortured or they could end up