

MILLER is another person who will be in the history books of this body because of his passion and because of his unique character as well. He is probably best exemplified by one of the books he has written called "Corps Values," obviously a reference to the U.S. Marine Corps, in which he describes how a lot of the values that have animated the course of his career and the values he has held dear throughout the rest of his life came from his training as a marine and from his drill sergeant whom he describes so vividly in the book as having almost literally pounded some very important lessons of life into ZELL's head at a very young age—lessons that he took away to apply throughout the rest of his life and which have stood him in very good stead throughout his career.

He has represented the people of his State of Georgia with passion and with great capability, not only as Governor but then to come to the Senate. He has certainly been a friend of people on both sides of the aisle. He is a Democrat, but he still, of course, has many friends here on the Republican side of the aisle.

I can't think of ZELL without thinking of some of the more humorous things he has done as well because despite his passion and enthusiasm, he also has a very good sense of humor. I remember one case in particular when he and Phil Gramm from Texas, who has left the Senate, teamed up to offer an amendment which had no chance of passing. There was no real rationale for it. It was an amendment to exempt pickup trucks from the mileage standards we were going to apply to all other vehicles in the Energy bill, but they thought there was something kind of un-American about having these standards applied to pickup trucks. The two of them offered the amendment.

During the course of the debate, more and more people came over here to listen to them. Their case made such great sense that one by one the Senators began to think maybe this is an amendment that ought to pass. At the end of the day, when they pointed out that, after all, there was no other place to haul your coon dogs when you are going to hunt, or have the rack for your gun, and all of the other things they pointed out what a pickup is for, and no other vehicle could do that job, the Senate finally, I think on a voice vote, acquiesced in their amendment. Because, after all, it made sense when ZELL MILLER and Phil Gramm argued that pickup trucks should be exempted from that standard, we exempted pickup trucks from that standard.

In other words, they knew how to have fun with the seriousness of this body to point out some of the common-sense things most Americans believe and we sometimes forget here in this body.

He is a man of great common sense, a man of the people who loves America greatly, and who certainly inspired me, Senator ZELL MILLER from Georgia.

These are only four of the colleagues who are going to be leaving us at the

end of this session. These are Senators whom I became particularly close to. I wanted to say a word about each one of them, to wish them all the very best, bid them farewell, also to know they have too many friends around here to ignore. And we are going to be staying in touch with every one of them.

We thank them for their service to the people of their States, to the Senate, and to the people of the United States of America.

The PRESIDING OFFICER. The Senator from Massachusetts.

#### IDEA

Mr. KENNEDY. Mr. President, a little later today, the House and the Senate, Republicans and Democrats, will come together for a monumental achievement to strengthen special education for millions of children with disabilities.

The agreement we have reached demonstrates what Americans have to come to realize—that students with disabilities are a far too important priority to be used as a political tool or cast aside because of an election schedule. Their education is not a partisan issue. It is an issue that touches families in every State and in every community.

This has been a long and arduous march for our country as we fought to recognize the civil rights of children with disabilities. When Congress first passed IDEA, disabled children were shuttered away. They had no place in our society. We have all heard the horror stories. There is no need to revisit those dark days, but we should never, ever forget from where we have come.

Then they were sent to separate schools. We know from another battle for integration that separate and equal are not synonymous. All of our children must be educated under the same schoolhouse roof.

Gradually, they were allowed to attend regular public schools, but had to remain in separate wings in those schools. Still, separate and unequal.

At long last, America is coming to know what parents of disabled children have known all along—that their children have hopes and dreams, just like every other child—that they have parents who love them and want the best for their children, just like any other parent.

America is coming to learn that children with disabilities want to be asked what every other child is asked: "What do you want to be when you grow up?"

America is coming to understand that disabled does not mean unable—that we shortchange our communities when we deny them the gifts and contributions of those with disabilities.

So today, all children in America—including those with disabilities have—the right to a free and appropriate education. No one can take that away. And now, 6.5 million children with disabilities attend public schools, and two-thirds of them spend most of the day in a regular education classroom.

The IDEA is about making a better life for children like Zachary Morris of

Newton, MA, who has Down's syndrome. Zachary enjoys reading, and loves to play the characters in Dr. Seuss books in class.

It is about Valerie Sims of Attleboro, MA. When her mother Katie noticed her daughter was having difficulty reading at home, she asked her school for an evaluation. The school discovered that Valeria has a learning disability. She spends a couple hours a day in a special classroom and now is able to read at grade level.

The bill before the Senate is a milestone. With this legislation, the debate is no longer whether children with disabilities should learn alongside all other children, but how best to do it. That is why this bill strengthens services to disabled children, works with their parents, improves teaching, and provides practical help to their schools.

This bill also involves changes in the IDEA law, changes which I know cause uncertainty and anxiety for many parents here today, especially when it comes to the proposed new discipline procedures. With the help of Senator SESSIONS, I believe we have reached a workable compromise. It makes sure no child is ever punished for behavior that is caused by their disability or has to go without the educational services they need to meet their goals. And for students whose behavior is caused by their disability, they will get new help under this compromise.

I know that around other issues related to discipline, many parents are worried that the changes in this bill will take away their rights to fight for their child. I want to address several of these issues to clarify what the intent of the conference committee was in making these changes and to reassure parents that we are not, in any way, taking away their rights.

Parents must be trained to be knowledgeable about the changes that were made in this bill and to be skilled advocates for their children. We must assure that misinformation is corrected so that parents do not believe that this bill stripped them of rights to advocate for their children and if necessary have representation by lawyers.

For example, this bill incorporate for the first time, well established civil rights guidelines setting forth the rare circumstances when school districts can recover fees from parents or their attorney's. These standards were developed in *Christiansburg Garment Co., v EEOC*, 1978. Defendants can only get fees against a parent's attorney if the case is wholly without legal merit and against parents only in the most egregious case where the parent acts in bad faith, knowingly filing a complaint for the sole purpose of embarrassing or harassing the school district. Since we know that parents of children with disabilities are far too busy to file complaints on these grounds, we do not expect this provision to be used by Local Educational Agencies and State Educational Agencies. No parent should be

in any way deterred from filing their legitimate complaint on behalf of their child.

Another example is that this bill for the first time provides a timeline for when a parent must file a due process complaint. Although the complaint must be filed within 2 years of the alleged violation, the remedy for lost services is not limited to 2 years. For example, a parent might first realize that their child may have a learning disability in sixth grade. If the school should have assessed the child in first grade and provided services, compensatory education would need to cover the entire period. The child with a disability should never be deprived educational opportunity because the schools are not holding up their end of the bargain.

This is also true for disciplinary matters. If the school has not developed an appropriate IEP or has failed to implement the IEP, the child should not be disciplined for conduct arising from the school's failure. It goes without saying that a child should never be punished for conduct that arises from the disability itself. Since the "manifestation determination" is so critical, it is imperative that parents be trained how to be skillful advocates in the manifestation determination process. A child with a disability may engage in the same conduct as a child without a disability, but not have the same ability to understand or control the conduct. In these situations it is inequitable to treat the children the same for disciplinary purposes.

This bill aims at remediation, not punishment. By adding strong requirements for functional behavioral assessments and positive and skillful behavioral interventions, we hope to address the conduct before it becomes misconduct. Suspensions and expulsions are the easy way out and I encourage school districts across the country to institute positive behavioral supports for all children. For the schools that have, the results have been remarkable. I strongly urge school districts to apply educational approaches and to use disciplinary approaches as a last resort.

Regarding the important issue of attorney's fees a sentence in the Statement of Managers' language of the conference report that provided the explanation for the attorney's fees language was inadvertently left out. By adding at Note 231 sections detailing the limited circumstances in which Local Educational Agencies and State Educational Agencies can recover attorney's fees, specifically Sections 615(i)(3)(B)(i)(II) and (III), the conferees intend to codify the standards set forth in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978).

According to *Christiansburg*, attorney's fees may only be awarded to defendants in civil rights cases where the plaintiff's claims are frivolous, without foundation or brought in bad faith.

The primary contribution of this legislation is that it strengthens the

broader community of those involved in the education of our children, and gives them a greater stake in the success of our children.

For our children, this bill provides at least 30,000 additional fully certified special education teachers in our schools. It will expand access to technologies that will help disabled children learn and become independent.

And for the first time, we will ensure that students with disabilities are provided with job training and other services that enable them to support themselves after they graduate. Five years after they complete their special education programs, more than half of those with disabilities still are not working or are not involved in continuing education. We spend more than \$12 billion for their education, only to abandon them once they finish school. Surely, we owe it to them, to their parents, and to our communities to provide the training and support they need to lead independent lives.

Our agreement will simplify the rules for services that help disabled students make the transition from the classroom to the rest of their lives. It requires early planning, and that transition services begin at age 16. It requires the evaluation of all students with disabilities to assist them in meeting post-secondary goals, and to help them apply for jobs, after graduation.

While the major transition provisions included in the Senate bill are not in this bill, Chairman BOEHNER assures me that they will be included in job training legislation next year.

Students with disabilities, more so than their peers, need an education plan that takes into account their academic needs, but also their life goals. Because for children with disabilities, success means more than learning the three R's, it means being able to live independently after they leave school and to contribute and be a part of their community. For this reason, this bill makes sure that a child's education plan lays out a clear roadmap to success in school and in life.

Related services, such as speech and language therapy, physical and occupational therapy, and psychological services are of extraordinary importance for disabled students and the IDEA law has always included them. This bill adds new services, such as interpreters and school nurses.

For parents, this bill assures that they have a strong voice in their children's education. It makes sure that students are evaluated quickly for IDEA services when a parent calls for them, and it works with parents to improve the coordination of educational services for students who change schools during a school year. Parents need to be kept informed of their children's progress. It requires all schools to give parents quarterly reports about their child's progress.

It provides new resources to parent training centers to help resolve dis-

putes between parents and schools, and it gives parents more flexible options to participate in their child's education. And above all, it holds schools accountable for results, and imposes sanctions on States that ignore the law, so that parents don't always have to fight failing schools alone.

For too long, the Department of Education has been a toothless tiger, with little interest in monitoring State compliance with the law and with too few tools to take action where there's need for improvement. We know that as a result, States are woefully out of compliance with the law. Every reliable source shows it, and it's the children who pay the price of this negligence.

According to the National Council on Disability, every State in the country is out of compliance with this law in some way.

A recent General Accounting Office report identified compliance failures in 30 of the 31 States visited. Over half of the failures were directly related to providing student services, the lifeblood of the IDEA, services such as counseling, speech therapy and assistive technology, which make the impossible possible.

The monitoring and enforcement provisions in this bill will hold the Department of Education to a higher standard. And it will improve their capacity to hold States accountable for fixing problems.

For teachers, the bill provides new training opportunities. And it recognizes that special education teachers face 2½ times the paperwork burden as other teachers by allowing 15 States to test new ways of giving teachers more time with students and less with needless paperwork.

It streamlines State and local requirements to ensure that paperwork focuses only on improving educational results for children with disabilities and it requires the Secretary of Education to develop simple model forms for individual education plans and other key requirements.

Teachers, principals and other school personnel are also given improved training options and special grants dedicated for this purpose. And a new grant program is created to help institutes of higher education to train our teachers.

States and local schools are allowed to use funds to provide professional development for teachers.

The new law also expands training options for general education teachers, principals and other administrators in how to make the IDEA work for their whole school community.

Most importantly, the bill sets a high standard of competency for special education teachers to meet so disabled students get the best education possible from the best trained professionals.

Special education teachers are modern-day heroes. They are teachers because they care and they do a remarkable job. But we are facing a shortage

crisis now, and in the coming years. One of the reasons so many teachers leave special education is they are not adequately prepared for the job. Better trained teachers remain in the field for longer and improve the results for students.

In No Child Left Behind we made a commitment to have a highly qualified teacher in every regular education classroom, and with this bill we do the same thing with students with disabilities. The new law requires that all special education teachers obtain a bachelor's degree, hold a license in their State to teach special education, and demonstrate subject knowledge. It is the right thing to do for students and it will help schools meet the goals under No Child Left Behind. These teachers need our support, and they will receive it as they work to meet these new, high standards.

For communities—for students and parents and teachers and schools—this bill encourages everyone to work together to solve problems and meet challenges. It says that if children must be removed from school for disciplinary reasons, the community must continue to see to the educational and other needs of those children. Far too often, issues between parents and schools quickly wind up in court. This bill tries to resolve them first through a complaint process before resorting to litigation. But it also preserves parents' rights when they do go to a formal due process hearing. It encourages parents and schools to share information to facilitate early and more effective resolution of disputes.

The law will require all schools to measure the academic performance of students with disabilities on all State and district-wide assessments, including alternate assessments aligned to a State's academic content standards or extended standards. It requires all States to include students with disabilities who take alternate assessments in their No Child Left Behind accountability systems.

Communities win with this bill when it comes to financing the education of disabled children, too. They contribute the majority of funds to educate disabled students, and we recognize that by giving them a greater say over how they spend Federal funds.

I deeply regret this bill does not require the Federal Government to meet its full funding commitment to local schools to help them cover the costs of special education. The bill at least sets specific funding targets, and we will continue to fight next to see that Congress and the administration meet them.

Meeting local needs also includes continuing support for early intervention programs. We know early intervention for our youngest children ages zero to 3 can make an enormous difference in their development, and that dollar for dollar these resources are one of the most effective investments we can make.

This law also gives States the incentives and the authority to create a seamless system of early intervention from birth through kindergarten so our youngest children get the best care possible and enter kindergarten ready to learn.

As a society, we are judged by how we treat our children, and we are measured especially by how we treat those children with special needs. That is why I believe so strongly in the right of every child to a free and appropriate education, and I believe this bill advances that cause.

I thank the many people who brought us successfully to this day. First and foremost, I commend the thousands of parents who made their views known in shaping this legislation. They have been citizen leaders at their very best. Chairman BOEHNER, Senator GREGG, the chairman of our committee, and Congressman MILLER deserve special thanks for their leadership in producing an agreement with such strong and overwhelming support.

I might mention, Mr. President, the vote in the House of Representatives was 397 to 3 on this legislation. The House voted earlier today. It reflects the best judgment of Republicans and Democrats in both bodies on an issue of such fundamental, basic importance to families who have the special-needs children but to all Americans who care about the quality of our society and the value this Nation places in terms of understanding the special gifts special-needs children provide for their families and for communities and for our country.

I also commend Senator SESSIONS for his bipartisan work in dealing with the discipline issue, which has needlessly plagued the debate on IDEA for so long.

Senator HARKIN is always at the forefront of the movement for equal rights for all persons with disabilities, including children. He has led the effort for positive support for all students with disabilities, and his best ideas are in this bill.

Senator DODD and Senator JEFFORDS worked effectively on this legislation to improve early childhood programs. They have been two pioneers in the development of the legislation since the very beginning, and they have been absolutely tireless in pursuing positive, constructive, responsive changes in these programs. They are both leaders on children's programs in the Senate.

Senator BINGAMAN fought for strong enforcement of civil rights protections for every disabled student. Senator MIKULSKI strengthened support for students making the transition from schools to careers. Senator REED improved the training and recruitment of special education teachers. Senator MURRAY improved the provisions on enforcement and the monitoring of the law and for caring for homeless and foster care children so they do not fall through the cracks. Senator CLINTON deserves credit for her work to ensure

that new funds are provided to improve the quality of alternative student placements, to provide more effective behavioral support for students, and to see that all schools are safe schools.

Thanks especially to the staff, who worked endless hours over the past few weeks to produce this bill.

All of us are grateful to Denzel McGuire, Annie White, Bill Lucia and Courtney Brown on Senator GREGG's staff for their dedication to making this bipartisan process work, and to Michael Yudin with Senator BINGAMAN for his expert counsel.

Also to Sally Lovejoy, David Cleary, Melanie Looney, Krisann Pearce and Brad Thomas with Congressman BOEHNER; Alex Nock, Alice Cain and Ruth Freidman with Congressman MILLER; John Little with Senator SESSIONS; Mary Giliberti and Eric Fatemi with Senator HARKIN; Elyse Wasch and Seth Gerson with Senator REED; Maryellen McGuire and Jim Fenton with Senator DODD; Bethany Little, formerly with Senator MURRAY's staff; Jamie Fasteau with Senator MURRAY; Justin King and Jean Cook with Senator JEFFORDS; Catherine Brown, Susie Saavedra and Maryana Zubok with Senator CLINTON; Carmel Martin, formerly with Senator BINGAMAN's staff; Sara Vecchiotti with Senator BINGAMAN; Rebecca Litt with Senator MIKULSKI; Erica Buehrens with Senator EDWARDS; Joan Huffer with Senator DASCHLE; Bethany Dickerson with the Democratic Policy Committee; and Kristen Bannerman with Senator ALLEXANDER.

I especially thank Jeremy Buzzell, Michael Dannenberg, Charlotte Burrows, Jim Manley, Jane Oates, Roberto Rodriguez, Kent Mitchell, Cody Keenan, Danica Petroschius and Michael Myers on my staff for their skillful work and dedication, and above all Connie Garner for all she has done for children with disabilities and their families and for never letting us forget what this law is really about.

Our thanks also go out to the hundreds of disability and education advocates across the country who worked so hard on this legislation.

This bill represents our best bipartisan effort, and I look forward to its immediate and imminent passage and strong support from both sides of the aisle.

Mr. President, before concluding—and I am going to include an appropriate number of these letters in the RECORD—we asked, just several weeks ago, some of those children whose lives will be impacted by this legislation a question. We sent them this question:

Take a few minutes to think about being an adult. What will your life look like? How do you think that school can help prepare you to be the best that you can be and make some of your own dreams for your future come true?

This is the answer from an eighth grader:

I want to be a doctor. I know that if I try hard to read well, I can learn better and then

I have a chance to be a doctor. Teachers like Mr. McKenzie and Ms. Ann help me to learn and make me feel good.

The question was:

Take a few minutes to think about being an adult. What will your life look like? How do you think school can help prepare you to be the best that you can be and make some of your own dreams for your future come true?

Again, this was a sixth grader:

I want to be an art teacher when I grow up. I want to learn all about and to be able to work with clay, paints, pencils and everything. I want to teach kids like me.

Mr. President, we have a book that I will not, obviously, put in the RECORD, but we have a number of letters like that. The hopes and dreams of these children are the hopes and dreams of children all across the country. This bill will help those hopes and dreams be achieved.

I see my chairman on the floor at this time. Again, I thank Senator GREGG for his work.

We have worked very closely on this legislation and other legislation, No Child Left Behind. He was tireless in terms of trying to increase funding for the IDEA. We had differences. Some of us felt we ought to move in a more rapid way, but he has certainly been strong and committed to the goals of this legislation over a long period of time. He is giving up the chairmanship of this committee to go on to other service in the Senate. I think all of us who have been a part of this pathway on IDEA are particularly in his debt for his leadership and the work he has done on this very important piece of legislation.

Mr. HARKIN. Mr. President, I want to thank my colleagues, Chairman GREGG and Senator KENNEDY, as well as Chairman BOEHNER and Representative MILLER, for conducting a truly bipartisan conference. When the legislative process is working properly, we have a fair negotiation—and more often than not, that produces a better bill. Not a bill that gives each of us everything we wanted, but a fair result given the two bills that we are charged with reconciling. And that is what we have here.

Last week, Washington Post's internet site ran a cartoon by Ted Rall that was one of the most egregious things I have ever seen. I don't know if many of you saw it, but it showed a student in a wheelchair with crossed eyes and drool coming from his mouth. He had joined a class of students without disabilities and here is what one of the panels of the cartoon read, "The special needs kids make people uncomfortable and slow the pace of learning." The cartoon showed the class changing from higher level math to simple addition because of the special education student.

The cartoon was supposed to be some kind of analogy to the United States, but it was very hard to understand the point. What was crystal clear, however, was the author's bigotry and stereo-

typing of children with disabilities. I understand that the Post will no longer run cartoons by Mr. Rall because cartoons like this are not funny. They are hurtful and serve as a stark reminder of why we are here and why IDEA is such important civil rights legislation.

I was here in Congress in 1975, as were some of my Senate colleagues, when IDEA was enacted. And it is important to remember why we passed this legislation in the first place. We passed it because bigotry and discrimination were keeping a million children with disabilities completely out of school. Those children were locked out of an education and denied the bright future that comes with an education. IDEA opened the doors of opportunity for those children.

I have participated in many subsequent revisions to the law over the past 29 years. And I am supporting this reauthorization because we continue our proud tradition of ensuring that children with disabilities have the right to a free, appropriate public education, FAPE. In addition, we improve the enforcement of that right.

Over the years, I have been involved in the debate about disciplining students with disabilities—and this was a major issue for the conferees. I know that parents were very concerned about changes to this section of the law. I appreciate and understand those concerns because I have shared them.

While this reauthorization streamlines the discipline provisions, it continues several key principles. We will continue to consider the impact of the disability on what the child is doing and we will not punish children for behavior that is related to their disability. It is also important that we continue to require that children receive educational services when they are being disciplined so they do not fall further behind. We also continue to emphasize that an assessment and services must be provided to children who have more serious behaviors so we can prevent future discipline problems.

I believe that discipline will become less and less of an issue over time as schools implement positive behavior supports more widely. Section 614(d)(3)(B), entitled consideration of special factors, was added in 1997 to provide special emphasis on certain related services, modifications and auxiliary aides which were not being considered by IEP teams and therefore not provided. The Senate bill modified subsection 614(d)(3)(B)(i) to state that behavioral supports must be provided when the child's behavior impeded his/her education or that of others. In conference, current law was re-instated in order to make the subsection consistent with the other special consideration subsections.

By instructing the IEP team to consider the specified services, it goes without saying that the services must be provided if the IEP team finds that the services will assist the child in benefiting from his/her educational pro-

gram. In the case of behavioral interventions, the section sets forth the circumstances when the services would be required.

The regulations to IDEA specify that "if, in considering the special factors ... the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP." 34 C.F.R. Sec. 346(c). And IEP services must be provided to the student. See Office of Special Education Programs Letter to Osterhout, 35 IDELR 9 (2000).

There has been widespread non-compliance with this requirement. However, with reauthorization's increased emphasis on monitoring and enforcement, we expect that this implementation will improve. Children whose behavior is impeding them or others from learning should get the positive behavioral supports they need when the IEP team considers this issue and finds that the services are part of FAPE for that child.

In addition, we allow schools to use up to 15 percent of their funds to address behavior issues for children who have not been identified as special education students. Also, Senator CLINTON has worked to include authorization for a program that would provide funding for systemic positive behavioral supports in schools.

Research by Dr. George Sugai and others indicates that the implementation of positive behavioral supports can have a dramatic impact on disciplinary problems. Dr. Sugai testified in 2002 before the Health, Education and Labor Committee that by shifting to schoolwide positive behavioral supports, an urban elementary school decreased its office referrals from 600 to 100. It also decreased in 1 year its days of suspension from 80 to 35. Schools can save administrators' time and resources and cut down on discipline problems by implementing these programs.

Another area that generated discussion in this reauthorization is litigation and attorneys fees. However, the facts show that there is very little litigation under IDEA. GAO examined the data and concluded that the use of "formal dispute resolution mechanisms has been generally low relative to the number of children with disabilities," according to a 2003 report titled, *Special Education: Numbers of Formal Disputes Are Low and States Are Using Mediation and Other Strategies To Resolve Conflicts*.

My own State of Iowa follows the general trend of very low hearings and court cases. A graduate student in Iowa did a thorough analysis of due process hearings in Iowa from 1989-2001. Since the amendments in 1997, there were three hearings in 1998; three also in 1999 and four hearings in 2000. The Department of Education informs me that this trend continues, with only

three hearings in each of the past 2 years. And there are thousands of children in special education in the State of Iowa.

Given the fact that litigation is generally not a problem in IDEA, in this reauthorization we merely include a standard that is used in other civil rights contexts—it is generally referred to by the case, *Christiansburg Garment Company vs. Equal Employment Opportunity Commission*, 98 S.Ct. 694 (1978). Both prongs of the Christiansburg standard (filing or pursuing litigation that is groundless or for bad faith/improper purpose) adopted today are very high standards and prevailing defendants are rarely able to meet them. They are designed for only the most egregious cases.

Also, in deciding cases under this standard, courts have considered the party's ability to pay. This is important because Congress does not intend to impose a harsh financial penalty on parents who are merely trying to help their child get needed services and supports. So in applying this standard and deciding whether to grant defendants' fees, the court must also consider the ability of the parents to pay.

A school district would be foolhardy to try to use these provisions in any but the most egregious cases. Not only would the school be wasting its own resources if it did not prevail, but it would be liable for the parents' fees defending the action.

Unlike parents who are entitled to attorney fees if they win the case, the fact that a LEA ultimately prevailed is not grounds for assessing fees against a parent or parent's attorney. As the Supreme Court concluded in *Christiansburg*, courts should not engage in "post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success."

As GAO found, there has been a low incidence of litigation under IDEA. The cases that are filed are generally pursued because parents have no other choice. Congress does not intend to discourage these parents from enforcing their child's right to a free, appropriate, public education. This is merely to address the most egregious type of behavior in very rare circumstances where it might arise.

In this reauthorization, we also include a 2-year statute of limitations on claims. However, it should be noted that this limitation is not designed to have any impact on the ability of a child to receive compensatory damages for the entire period in which he or she has been deprived of services. The statute of limitations goes only to the filing of the complaint, not the crafting of remedy. This is important because it is only fair that if a school district repeatedly failed to provide services to a

child, they should be required to provide compensatory services to rectify this problem and help the child achieve despite the school's failings.

Therefore, compensatory education must cover the entire period and must belatedly provide all education and related services previously denied and needed to make the child whole. Children whose parents can't afford to pay for special education and related services when school districts fail to provide FAPE should be treated the same as children whose parents can. Children whose parents have the funds can be fully reimbursed under the Supreme Courts decisions in Burlington and Florence County, subject to certain equitable considerations, and children whose parents lack the funds should not be treated differently.

I also want to discuss the monitoring and enforcement sections of this bill. I want to thank Senator KENNEDY for his leadership on this issue. Again, GAO has issued a report that has informed our deliberations around this issue. They noted that the Department of Education found violations of IDEA in 30 of the 31 States monitored. In addition, GAO found that the majority of these violations were for failure to provide actual services to children. That report, issued this year, is titled, *Special Education: Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System*.

When we passed the Americans with Disabilities Act, we said that our four national goals for people with disabilities were equality of opportunity, full participation, independent living, and economic self-sufficiency. But children with disabilities are never going to meet any of those goals if they don't get the tools that they need when they are young. So if we truly want equal opportunity for individuals with disabilities, it has to start with IDEA, and with our youth, who are our future. The law must be enforced so they receive the services and supports they need to get a quality education and a brighter future.

As part of the enforcement of this law, States must ensure that local education agencies are meeting their targets to provide a free, appropriate public education. If they fail to do so, the State must take action, including prohibiting the flexible use of any of the local education agency's resources.

In addition to monitoring and enforcement, there are other improvements in this bill. I will mention one area that is near and dear to my heart because of my brother, Frank, who many of you know, was deaf. In this bill, we add interpreter services to the list of related services, a change that is long overdue. And we continue to require the Department of Education to fund captioning so deaf and hard-of-hearing individuals will have equal access to the media.

While I support the bill, I must point out, however, that I am deeply dis-

appointed that this bill does not include mandatory full funding of IDEA.

SECTION 615(K)

Mr. President, I say to my colleague, Senator KENNEDY, with whom I have worked on these issues for many years, there are revisions in this bill to the provisions concerning the authority of school personnel to place a student with a disability in an alternative educational setting. That is section 615(k). As you know, this was a subject of much discussion when IDEA was reauthorized in 1997, and I think we reached a good balance at that time. Is there an attempt here in this new reauthorization to change the balance we created in 1997?

Mr. KENNEDY. I can answer without hesitation that there is no attempt to change the basic principles of what was done in 1997. As was recognized at that time, the general rule is that a child with a disability cannot be suspended or placed in an alternative placement for more than 10 days. In order to meet safety concerns of school personnel, Congress added specific exemptions in 1997 to deal with the most dangerous situations. In keeping with that concern, the school may place a child in an alternative setting if he has inflicted serious bodily injury on another person at school. However, even in these circumstances, the child may not be removed for more than 45 days and must receive a free, appropriate, public education and behavioral supports in the alternate setting.

Mr. HARKIN. I thank my colleague, and I agree with his explanation. I ask the Senator, what about the child with a disability who violates a code of conduct in a way which does not reach that level of dangerousness? In 1997, we distinguished between situations where the conduct was related to their disability and those where it was not. Is this distinction also preserved in our new bill?

Mr. KENNEDY. Absolutely, it is a basic premise of disability civil rights law that someone should not be punished for disability-related conduct. Nowhere is this more true than in the educational setting. That is why we have placed an emphasis on functional behavioral assessments and positive behavioral supports. We want to address behavior educationally, hopefully before it becomes misconduct.

Mr. HARKIN. I wonder whether my colleague believes this reauthorization changes the factors for deciding whether the behavior is a manifestation of the disability?

Mr. KENNEDY. I say to my friend from Iowa, the answer is no. While there was an attempt to streamline the language, the information that should be reviewed and the factors that should be considered should be the same. In 1997, the act set forth specific instances when the child's behavior would be a manifestation, when the child's disability impaired the ability to understand or control the behavior, or when the individualized education program

or IEP was not being appropriately implemented. These instances would still constitute grounds for finding that the conduct is a manifestation of the disability, as would any other relevant factor or special circumstance which indicated that the conduct in question was caused by, or in the alternative, substantially related to the child's disability. If the student's conduct is a manifestation of their disability, the student may not be moved to an alternative placement for more than 10 school days unless one of the specific dangerousness exceptions apply.

Mr. HARKIN. I thank my colleague for his explanation.

Mr. GREGG. Mr. President, I ask unanimous consent to speak as in morning business for 5 minutes.

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

Mr. GREGG. Mr. President, let me first thank the Senator from Massachusetts for his very generous comments, but more importantly for his extremely positive and constructive and aggressive role in bringing this bill to fruition. He and his staff have done an exceptional job of reaching across the aisle to make sure that this bill, so critical to so many children in our Nation, was completed and completed in a manner where everybody could feel comfortable that the product was good and was going to improve the lives of these special-needs children.

This bill has some exceptional strengths. It doesn't respond to all of the problems we know are out there relative to IDEA, but it makes dramatic strides forward in improving this very significant piece of legislation, which many of us have worked on for a long time. I think it is a reflection of the good faith and the good attitude brought to the table that we were able to reach an agreement.

This was not an easy piece of legislation to put together. It came together not only because of our side, in the Senate, with myself, Senator KENNEDY, and other Members of the committee, but because over on the House side Congressmen BOEHNER and MILLER played a very positive role in making sure we reached an agreement.

This bill's uniqueness is that it changes the paradigm relative to how we help these children. The goal is to make sure the special-needs children have a reasonably decent shot at making sure they accomplish as much as they are capable of accomplishing. So we go from an input system, where we had a lot of T's to cross and I's to dot, where we ask are these children getting the best education they can get, and are there results? It is an output look, a look at accountability to make sure these children are trained and given skills and the academic preparation they need. So it changes the emphasis of IDEA to that of being one of input and regulation—to say how far can we go to improve this child's life and education capabilities? We have trained the teachers and given them

more flexibility, hopefully, and less regulation and less paperwork and more time with students. We also hope we have given parents tools to work with and given the school board tools to work with. We hope we have dramatically released the litigiousness of this exercise that created an atmosphere where parents and school boards and teachers can work out a game plan for their children and not feel they have to resort to lawsuits.

In addition, we have addressed critical issues, such as the question of discipline in the classroom and how best to deal with a child who has special needs, and how that child can interface with the classroom in a positive way. I thank Senator SESSIONS for that. This was the most difficult part of the bill. Senator SESSIONS gave strong leadership and we were able to work out a strong compromise.

Again, the reason this bill succeeded was because everybody came to the table in good faith and tried to reach an agreement that would be positive for the children who have special needs in our Nation. And we have been successful, in my opinion, in moving this ball well down the field toward that goal. Will there need to be more tweaking and effort in this area? Of course. That is a fact of life. But have we made dramatic strides toward giving these children a better shot at a better life? Absolutely, under this legislation.

Senator KENNEDY listed all the different Members on his side and many on ours who played a major role in making this bill work. I intend to put those in my statement, as I recognize my time is limited. A lot of players came to the table from a lot of different offices—on the staff side but, more importantly, on the Members' side, and worked very constructively. Certainly, we appreciated the genuine effort put forward by Members who serve on the HELP Committee to reach agreement here.

I especially thank Denzel McGuire of my staff, who leads our education activities. She has been the author and the energizer of a lot of good law around here. Much of it is now bearing fruit; for example, No Child Left Behind. This will be another legacy of hers, in which she can take great pride, and in which I also take great pride.

Again, I thank my ranking member, Senator KENNEDY, and his staff, including Connie Garner, for their very constructive role and their willingness to work so aggressively with us to reach a product that will have a very positive impact on lives.

This bill is going to make a lot of kids who have special needs, with special problems, have a much better life and a much better chance at an education that fulfills their strengths and gives them a chance to use those strengths in a positive way.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President—

Mr. COLEMAN. Mr. President, I understand the Senator from West Virginia has the floor, and I understand he is going to give a Thanksgiving message. However, I ask the distinguished Senator from West Virginia if he will yield to me for 10 minutes to address the pending measure.

Mr. BYRD. Mr. President, I will be happy to yield.

I ask unanimous consent that I may yield to the distinguished Senator for not to exceed 10 minutes, and that I may then be recognized.

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

Mr. COLEMAN. Mr. President, I rise to address the pending measure, the Miscellaneous Trade and Technical Corrections Act. I was proud to join the bipartisan efforts in the Senate to bring this important legislation to conference. This bill is important to me and to the people of Minnesota because it helps make our State and our Nation more competitive in a world market, which can be pretty rough and tumble.

That said, however, I am equally opposed to the extension of permanent normal trade relations to Laos, a provision slipped into this trade bill in conference committee, notwithstanding the fact that neither the Senate nor the other body voted to include this provision in their respective versions of the bill.

The Laos trade provision was not included in the underlying bill moving through the regular process because, as the saying goes, "there are some things no amount of sunshine can disinfect." That is an apt way to describe the terrible human rights record of Laos. If the United States were to ever extend normal trade relations to Laos under that country's current human rights conditions, it could only be done in this way—without either body addressing the issue head on. It could only be tacked onto a popular piece of legislation that was not amendable, as was the case with the conference committee report, allowing this otherwise unacceptable provision to get a free ride without the scrutiny it deserves.

This provision did not emanate from the Senate negotiators but from the negotiators in the other body. I commend Chairman GRASSLEY and Senator BAUCUS, two good friends, for whom I have the greatest respect, for all the hard work they put into the underlying bill. It is a good bill. But because the bill wound up with this Laos trade provision on it, I was put in the position of having to oppose invoking cloture on the bill, a vote I took earlier today. This is the first time as a Senator I opposed cloture. I did not take this position lightly. I have seen too much good legislation in the Senate die not because it didn't have majority support, but because it could not get a simple up-or-down vote. My vote earlier today was also not easy because I strongly support trade. Minnesota is the seventh largest agricultural export State in the Nation, and twelfth in overall

exports. Trade is good for America and for Minnesota.

Frankly, opposing normalized trade with a country is a tough call, even when trade with that country is of nominal value to the United States, as is the case with Laos. But frankly, there are just some times where the actions of an unapologetic nation are so egregious that it is morally wrong to move forward on trade liberalization with that nation because it would effectively place the imprimatur of the United States on those actions. The actions of Laos rise to this level. I know we will not be able to stop this Laos trade provision today with it being attached to a bill that enjoys such overwhelming support on both sides of the aisle. But I am pleased that a resolution I introduced condemning Laos for its human rights abuses will be taken up by the United States Senate today.

I am pleased to be joined by Senators FEINGOLD, KOHL, and DAYTON on this resolution, and I appreciate the assistance of Chairmen LUGAR and GRASSLEY, Senators BAUCUS and BIDEN as well as the majority leader in helping to work out this very important and very strong resolution. Our resolution essentially says to Laos, you have now got normal trade relations with the United States, now, shape up and rise to that very basic level of human decency expected around the civilized world by today's standards—and probably achieved by most of us in the Dark Ages.

Laos is a Communist nation with a disturbing human rights record, particularly with regard to its treatment of ethnic minorities.

Laos is home to an ethnic minority, the Hmong. The Hmong are a brave and freedom-loving people. During the Vietnam War, thousands of Hmong aided American soldiers. The CIA trained and armed approximately 60,000 Hmong guerrillas to disrupt Viet Cong supply lines and rescue downed pilots during the Vietnam War. They served admirably and saved American lives.

When Laos fell to the Communists in 1975, the government began to systematically persecute these people, in retaliation for their support of our soldiers and their rejection of communism. Tens of thousands of Hmong were able to flee difficult conditions in Laos, and many have resettled in Minnesota, Wisconsin, and California where they are hard-working, important members of our communities. In fact, this year the U.S. is welcoming another 15,000 Hmong refugees who fear returning to Laos from their camp in Thailand.

Thousands of Hmong remain in Laos, however, and fear for their lives daily.

The Lao Government continues to employ ruthless tactics against them. Amnesty International has accused the government of Laos of using starvation as a "weapon of war against civilians." More recent reports—and even grotesque video footage—suggest the rapes and killings of several young Hmong girls at the hands of Lao soldiers.

Let me give you an example from my State. A constituent of mine, a Lutheran Minister from St. Paul who is Hmong, traveled to Laos last year to translate for two European journalists who were investigating human rights in Laos. During their trip, Reverend Mua and his associates were arrested by the Lao police on suspicion of murder. He was denied consular access for over a week and subjected to a 1-day show trial, after which he was convicted for 15 years in prison. Although he was eventually released after more than a month in captivity—thanks to the hard work of our American diplomats in Vientiane—Reverend Mua's case is one more illustration of the Lao government's disregard for human rights and due process, as well as its apparent discrimination against this ethnic minority.

The State Department's Human Rights Report on Laos catalogues the many failings of this regime with regard to human rights. Permit me to share some key findings of this report:

The Government's human rights record remained poor, and it continued to commit serious abuses . . . Members of the security forces abused detainees, especially those suspected of insurgent or anti-government activity . . . Police used arbitrary arrest, detention, and surveillance . . . The Government infringed on citizens' privacy rights and restricted freedom of speech, the press, assembly, and association. . . . The Government restricted some worker rights. Trafficking in women and children was a problem.

The report goes on and on.

According to the U.S. Commission on International Religious Freedom:

There continue to be serious religious freedom problems in Laos. The government interferes with and restricts the activities of all religious communities . . .

Now the Commission does note some recent improvement by the Lao government.

Nevertheless, "Lao officials, primarily those at the provincial and local levels, have continued to harass, detain, and arrest individuals reportedly for participating in certain religious activities." Bear in mind that this state of affairs—harassment, detention and incarceration for one's religious convictions—is apparently an improvement over the Lao Government's performance of last year.

My office has received troubling reports from Laos about shocking behavior on the part of the Lao military toward the Hmong minority. As I have mentioned, a new video documents alleged rapes and murders of a number of young Hmong girls. The Lao Government, not surprisingly, has disputed these reports. But the areas in which these atrocities appear to have been committed are not open to outside observation. Outside groups are not allowed to enter these communities to verify—or even dispute—these allegations. The Lao Government certainly has acted as though it has something to hide.

This United States is not alone in our concern. In August 2003 the United

Nations Committee to Eliminate Racial Discrimination "deeply regretted that the Lao People's Democratic Republic had failed to honor its obligations . . . expressed its grave concern at the information it had received of serious and repeated human rights violations in that country; was extremely disturbed to learn that some members of the Hmong minority had been subjected to serve brutalities;" and, "deplored the measures taken by the Lao authorities to prevent the reporting of any information concerning the situation of the Hmong people . . ."

Finally, they say you can tell a lot about a man by the company he keeps. Let us then consider the government of Laos, which counts among its closest friends such nations as North Korea and Burma. Last year Laotian representatives met with representatives of North Korea where, according to the BBC, "both sides . . . exchanged views on the need to boost cooperation . . . (in) talks (that) proceeded in a friendly atmosphere."

And according to the Vietnam News Agency and other sources, in May of last year, "Top leaders of Myanmar and Laos . . . expressed their delight with the two countries' growing friendship and highly valued the mutual assistance and successful cooperation in the spheres of politics, security, economy, trade and socio-culture." I am sure I do not need to remind the members of this body that North Korea is a charter member of the "axis of evil," nor need I recall that this very body has voted twice in the last two years to impose sanctions against Burma. A country that seeks to boost "friendly" cooperation with North Korea and delights in its "growing friendship" with Burma ought to give us some pause, some opportunity to examine this normalized trade relationship, giving us an opportunity to vote against it rather than putting it in a bill we all know will pass.

I believe in trade. I believe it helps the people in my state, and that it can help to create a more inter-connected and ultimately more peaceful world.

But I am wary about the signals we send by extending permanent normal trade relations to a nation with such an abysmal human rights record.

The timing is particularly troublesome, coming as it does on the heels of such highly disturbing reports.

I wish we had an opportunity to debate this issue on its face. I wish we had a chance to hold a hearing on trade with Laos, or to debate it as part of an amendable piece of legislation. My colleagues in the other body also wish they had been afforded the opportunities, or even been advised of the inclusion of the Laos measure in what is otherwise a very popular bill. I will be watching Laos closely and if progress is not made, expect to revisit this issue.

I know my colleague, Senator FEINGOLD, will expect to revisit the issue. This is a bipartisan issue.



Finally, let me say, 99 percent of this bill is good for the country and good for Minnesota. My home State has a strong tradition in support of trade, and normally the underlying bill would be a slam-dunk back home. But Minnesota also has a strong tradition of respect for human rights and the culture of life, and at least with this Senator, and with respect to this extremely egregious case, the human rights and the culture of life must be the first consideration.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is to be recognized.

Mr. BYRD. I thank the Chair. Mr. President, I ask unanimous consent that I may speak without regard to germaneness, with the understanding that the time be charged against me under the cloture rule, and that I not speak beyond 10 minutes.

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

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD are printed in today's RECORD under "Morning Business.")

Mr. BYRD. 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. FEINGOLD. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

Mr. FEINGOLD. Mr. President, I would like to take a minute to explain or review where we are procedurally. The Senate has voted for cloture on the miscellaneous trade bill, including the Laos NTR issue. Under rule XXII, 30 hours of debate is available postcloture for further debate on the conference report.

I would like to ask how much time remains available for debate on the miscellaneous trade bill?

The PRESIDING OFFICER. There is 30 hours for all consideration, which includes the debate, quorum calls, and votes, which would end tomorrow at 4:44 in the afternoon.

Mr. FEINGOLD. Mr. President, how much time have we consumed of the 30 hours?

The PRESIDING OFFICER. Cloture was invoked this morning at 10:44, so we have consumed slightly less than 5 hours.

Mr. FEINGOLD. Mr. President, we apparently have a little over 25 hours remaining of the 30-hour period. I have with me a number of State Department and international reports from which I would at some point like to read. They describe further some of the horrific human rights abuses that have been perpetrated by the Lao Government. Senators COLEMAN, KOHL, DAYTON, and I have drafted a resolution condemning these abuses and urging the Lao Government to allow international access to vulnerable populations.

I don't want to shut this place down, but this is a very important issue, and it is my intention to remain on the floor and to prevent us from transacting any business unrelated to the conference report before us until we reach agreement to pass this important resolution. I realize I do not have the votes to block NTR from passing, but I cannot stand by and let that pass without insisting the Senate take strong action noting and condemning the Lao Government's actions.

I hope we can work things out quickly, and I think we can. I appreciate the support and hard work of my colleagues, particularly Senators KOHL and COLEMAN, who are working hard to get this resolution through.

At this point, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. DORGAN. Mr. President, are we in morning business?

The PRESIDING OFFICER. The Senate is considering a conference report under cloture.

Mr. DORGAN. I ask unanimous consent to speak in morning business for as much time as I may consume.

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

#### COUNTRY-OF-ORIGIN LABELING

Mr. DORGAN. Mr. President, as we near the end of the legislative session and its final day or 2 day, it is interesting what kicks around these Chambers: some people have ideas about adding things to the Omnibus appropriations bill. Other people want to take something out that they think is in that bill.

I came across a story in the newspaper this morning that describes something I discussed on the floor of the Senate yesterday. It says, "GOP looks to repeal food label law." Then it quotes the House majority whip saying he expects the Senate to agree to repeal the country-of-origin labeling law now that its proponent, Senator TOM DASCHLE, is no longer in office.

First of all, Senator TOM DASCHLE remains in office until the end of his term.

Second, it is true that Senator DASCHLE is the strongest proponent and actually the architect and the author of the legislation that has created country-of-origin labeling. But I say to those in the GOP who look now to repeal the country-of-origin labeling law that they are in for a fight. Repeal is not going to happen just because somebody has a hiccup in the morning and decides they don't like this law. It is the law. We passed it.

The Secretary of Agriculture dragged her feet and didn't want to implement it. The omnibus conference legislation

last fall actually delayed the implementation time for the law, and now they just want to kill it outright, apparently. Let me describe again what it is we are talking about. We are talking about labeling for meats and vegetables.

In the morning, when you put your T-shirt on, there is a label that tells you where that T-shirt was produced. Slip on a pair of shoes or slippers and you will find out where they were produced because they have a label. Go to the grocery store and pick up a can of peas off the shelf and take a look at its label and what is in this can, and you can see where it was produced. Most items that consumers are able to buy these days has a label that tells you where those things were produced. But that is not the case with meats and vegetables.

Country-of-origin labeling is something that is important for our farmers and ranchers because they produce the finest quality of food in the world for the lowest percent of consumers' disposable income. And it is also very important for consumers.

I held up a piece of beef on the floor of the Senate the other day. I said: I defy anyone to tell me where that piece of beef was produced. Where does it come from? Does it come from the processing plant in Mexico that was processing beef and shipping it to the dinner tables of American consumers?

By the way, that processing plant was only inspected once. And when it was inspected, the inspector found that carcasses were hanging in rooms that were not cooled, with feces on the carcasses. The meat was being walked on by the folks who were working in that plant, with bacteria all around. The most unclean conditions you can imagine were in that plant, and eventually it was shut down. But that meat was going to the American kitchen table. Meat was produced in that Mexican processing plant under the most unsanitary of conditions.

That plant was closed down, but it has reopened under a new name, a new ownership.

Does anybody know whether the slab of beef that I held up the other day came from that plant? You don't. It is because there is no labeling. No one has any idea where any of it comes from. That is why farmers and ranchers in this country support labeling. Fruits and vegetables ought to be labeled. Consumers deserve it.

Farmers and ranchers in this country produce the best quality food in the world, and we ought to have country-of-origin labeling for meats and vegetables. Who doesn't want it? The big economic interests don't want it.

When they start whistling, we have people around here who start dancing. The faster they whistle, the faster these folks dance.

Now, apparently, they say let us just dump this proposal that is now law, or let us rather repeal the country-of-origin labeling law.



I say, again, there are those of us who will wage an aggressive fight with those who want to decide to repeal that law.

Not only do we have people who want to stick legislation like this to repeal the country-of-origin labeling in the omnibus bill at the end of this session, which would be a huge step backwards and a real slap in the face not only of consumers but also of farmers and ranchers, but we also still have people blocking legislation that should be completed by this Congress. Let me describe specifically what that is.

We have been working in the Senate for a long while to allow the reimportation of prescription drugs. U.S. consumers pay the highest prices in the world for prescription drugs. Brand-name prescription drugs cost a great deal of money in our country. Miracle drugs offer no miracles to those who can't afford to buy them. I commend the drug companies for producing miracle medicines. But there is no excuse for charging the American consumer the highest prices in the world.

I will give you some examples.

If you are a woman and have breast cancer, God forbid and have to take the drug tamoxifen, I have had people tell me that they went to Canada and paid one-tenth of the price they were charged in the United States for that anti-cancer drug.

I spoke just recently, in fact, to a couple in North Dakota who have gone to Canada for 3 straight years to buy tamoxifen. They said they paid one-sixth of the price that was charged locally in this country.

As I indicated, I have heard people say they paid 10 times more in the United States for that drug than you would pay in Canada for that.

What about Lipitor for cholesterol? Lipitor is one of the top selling cholesterol-lowering drugs in the United States. I have two bottles in my office that I have used previously on the floor of the Senate. They look identical because they are made by the same company; the same pill put in the same bottle, sold by the same pharmaceutical company. One was sold in Winnipeg, Canada, and the other one in Grand Forks, ND—the same pill, the same tablet called Lipitor.

The only difference is the price. Buy it in the United States and you pay \$1.86 per tablet. Buy it in Canada and you pay \$1.01 per tablet.

Why is the price for that cholesterol-lowering drug almost double in the United States? It is because U.S. consumers are charged the highest prices in the world for most brand-name prescription drugs.

We have been trying very hard in the Congress to pass a bill that would allow the consumers to make the choice where to purchase those drugs. In fact, the legislation Senator SNOWE and I and others have introduced would allow American pharmacists to go to Canada and buy that lower priced prescription drug and bring it back to our

country and pass the savings along to the consumers. But we have been blocked in this effort.

Many of us in the Senate put together a bipartisan bill, and that bipartisan legislation was authored by myself, Senator SNOWE, Senator KENNEDY, Senator MCCAIN, Senator DASCHLE, and many others. That bill did not get through the Senate because it was blocked.

I thought I had an agreement with the majority leader. He believed that he had reached a different agreement at about midnight one evening in exchange for releasing a hold on a key nominee. I believe I was told that we were going to be able to see action on that legislation. The majority leader feels differently. I regret that we have that disagreement.

But we come to the end of this session, and the fact is that the effort to help American consumers by putting downward pressure on prescription drug prices in this country has been scuttled. It has been blocked. The White House has blocked it. The FDA has blocked it. The majority in the Senate has blocked it.

In the Presidential debates, in fact, this issue came up. The President was asked, why are you blocking the reimporting of prescription drugs to put downward pressure on prescription drug prices? And the President said, "I haven't yet"—meaning he hasn't blocked it yet. Of course he has, he has continually blocked it. The President went on to say during the debate:

Just want to make sure they're safe. When a drug comes in from Canada, I want to make sure it cures you and doesn't kill you. Now it may well be here in December you'll hear me say, I think there's a safe way to do it. If they're safe, they're coming.

But the President meanwhile goes on blocking the reimportation of prescription drugs.

The bill we have written is a bipartisan bill. This is not Democrat versus Republican. It is a bipartisan piece of legislation.

Let me point out with respect to the safety issue, in testimony from an executive of a drug company, a vice president for marketing at Pfizer, Dr. Peter Rost:

The biggest argument against reimportation is safety. What everyone has conveniently forgotten to tell you is that in Europe reimportation of drugs has been in place for 20 years. It is called parallel trading.

In Germany, if you want to buy a prescription drug from Spain because it is cheaper, you can. If you are in France and you want to buy it from Italy, you can do it. It is called parallel trading. The Europeans have done it for 20 years routinely and there is no safety issue.

Our legislation would give American consumers and pharmacists the ability to access FDA-approved drugs that are produced in FDA-approved plants. This approach allows the marketplace to put downward pressure on prescription drug prices here by being able to buy

the identical prescription drug, FDA-approved, from Canada, or another country. As long as there is a chain of custody that is safe—and no one argues that the Canadian chain of custody for prescription drugs is not safe—there is no reason why we should not allow the marketplace to work for the benefit of consumers.

We end this legislative session with this proposal having been blocked.

It is estimated that if Americans could pay the same price as the Canadians for prescription drugs, the consumers of this country would save \$38 billion. This is not a small issue. This is a big issue. The fastest rising portion of health care costs is prescription drugs, and we are trying desperately to do something about it.

I don't denigrate the pharmaceutical industry. They are a big industry, strong and tough. They fight hard to protect what they have. I don't denigrate that. But there needs to be some competition in order to put downward pressure on prices. It is unsound public policy for our country to decide to allow the pharmaceutical industry to charge the American consumer the highest prices in the world. It is especially tough for senior citizens. Senior citizens are about 12 percent of the population of this country and they consume one-third of the prescription drugs in America. They have reached that point in their life where they are receiving a lower income and having to shell out substantially more for prescription drugs. Many of them simply say, we cannot afford it.

That is why Republicans and Democrats, together in a bipartisan effort, have tried very hard this year to get this reimportation legislation through the Senate. I regret we come to the final day or days and it remains blocked.

My hope is that those who I felt had reached an agreement with us to give us an opportunity to have a vote on this legislation will understand we will be back the minute the Congress returns, in a new Congress, ready to fight this battle again. This battle is not over. We are not quitting. On behalf of the consumers of this country, they deserve fair treatment with respect to the prices of prescription drugs.

It appears to me we are one or two days from completing this legislative session. I will have great regrets—I believe I speak for my colleagues Senator MCCAIN, Senator SNOWE on the Republican side, Senator DASCHLE, Senator KENNEDY, Senator STABENOW and Senator FEINGOLD on the Democratic side—that we have gotten to this point and have been blocked each and every step of the way.

Then we have the President say, I haven't blocked it. Of course, he has blocked it. The FDA, the White House, and the majority in the Senate have blocked our bipartisan bill, an opportunity to try to do something to put downward pressure on prescription drug prices. That, in my judgment, is a

failure of this Congress, and it is a failure I hope we will soon remedy when we turn the calendar over to January and begin a new Congress.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. I ask unanimous consent that following my remarks, the senior Senator from Minnesota, Senator DAYTON, be recognized.

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

#### MEDICAL RESEARCH

Mr. SPECTER. Mr. President, I have sought recognition to speak briefly about medical research in the United States. The Senate is now working through, as we all know, an Omnibus appropriation bill, which includes the appropriations bill for the subcommittee which I chair on the Department of Labor, Health and Human Services, and Education. One of the component parts of this bill involves the funding for the National Institutes of Health. Our allocation is grossly insufficient. It impacts on many areas. It impacts on education. It impacts on worker training. It impacts on many aspects of the delivery of health services.

One line which I think is particularly troublesome is the absence of adequate funding for the National Institutes of Health. I say that because of the very remarkable advances which NIH has made in the past, and the enormous potential for the future.

I was elected to the Senate in 1980. In the first year I served on the subcommittee, which I have for the full 24 years of service, the NIH funding was something less than \$3.6 billion. By this current fiscal year, funding had increased to some \$28 billion, significantly as a result of the leadership of Senator TOM HARKIN, who is the senior Democrat on the subcommittee, and my pressure to increase the funding, backed up by the full committee and by the full subcommittee, Senator STEVENS, Senator BYRD, and then approved most of the time by the full body. This year, our funding is very insufficient.

If we look at where medical research has brought us, it is remarkable. Life expectancy has increased from 47 years in the year 1900 to 77 years in the year 2001. Polio, smallpox, and other infectious diseases no longer kill or cause suffering to large numbers of people. The rate of death due to heart disease has been cut by more than half since 1950. Death rates from cancer for 11 of the top 15 cancers in men have decreased; 8 of the top 15 cancers in women have been decreased. Diagnoses with multiple myelomas have been reduced from a death sentence to living with a chronic condition as a result of new drugs developed through biomedical research.

But there is still an enormous challenge. Heart disease continues to be the number one killer; cancer, the number 2 killer, not far behind. The tragic aspect of these deadly diseases is

that they could all be cured, I do believe, if we had sufficient funding.

Two of my closest friends have died recently as a result of breast cancer. Being the chairman of this subcommittee for many years has brought me into contact with many people who have maladies, whose children have maladies, who suffer from Parkinson's, whose family suffers from Alzheimer's, and varying categories of cancer.

My Chief of Staff, a young woman named Carey Lackman Slease—well known in the Senate community—died on July 14 of this year at the tender age of 48. She was known by practically everybody in the Senate. She came to the Senate to work for Senator Heinz 24 years ago when she was 24. She left the Senate for a time for a variety of private enterprises, but her heart and soul belonged to the Senate, and she came back as my Chief of Staff and did a spectacular job.

The breast cancer disease lingered in her body, and notwithstanding the pain, suffering, and torture she went through; she stayed at the job. And she stayed at her desk, insisting on staying, although many of us tried, including me personally, to have her ease off. She was in love with the Senate and found the Senate work the best therapy, so that when she passed, it was a shock to people who had been working with her in very recent periods of time before. All of us took her death very hard, especially in the context of our thinking that her death could have been avoided had medical research had sufficient funds and sufficient resources to do the job.

A few days ago, on November 11, a very close personal friend, Paula Kline, who was the wife of my son's law partner, who I was very close to, who was practically a daughter, died at the age of 54 of breast cancer. In a very valiant and very courageous way, Paula Kline struggled with all of the advanced protocols and possibilities which might have spared her or elongated her life. And going through the various forms of treatment, they turned out to be worse than the cancers themselves. But again, the tragedy is that Paula Kline's death could have been avoided had sufficient resources been devoted by this very wealthy country to medical research. We have a gross national product in excess of \$11 trillion. We have a Federal budget of \$2.4 trillion this year, and it will be more next year. And when we take a look at the budget for the National Institutes of Health at \$28 billion, it is, candidly, scandalous that with our resources, our resource capability, research capability in biomedical science, that people are still dying of breast cancer or colon cancer or heart disease.

There is a long list of maladies that people suffer from where there could be cures: autism, Parkinson's,

scleroderma, muscular dystrophy, osteoporosis, cervical cancer, lymphoma, prostate cancer, colon cancer, brain cancer, pediatric renal dis-

orders, glaucoma, sickle cell anemia, spinal cord injury, arthritis, a variety of mental health disorders, hepatitis, deafness, stroke, Alzheimer's, spinal muscular atrophy, amyotrophic lateral sclerosis—commonly known as Lou Gehrig's Disease—diabetes, breast cancer, ovarian cancer, multiple myeloma, pancreatic cancer, head and neck cancer, lung cancer, multiple sclerosis, macular degeneration, heart disease, infant sudden death syndrome, schizophrenia, polycystic kidney disease, Cooley's anemia, stroke, primary immune deficiency disorders.

That list was compiled by Bettilou Taylor, who is the most—I was about to say the most extraordinary staffer; we have a lot of extraordinary staffers in the Senate family—but a most devoted worker. I will take just a moment to commend her and the staff on the Appropriations Subcommittee of Labor, Health and Human Services, and Education. They have been working around the clock, home for an early morning shower, and back at work, turning out an omnibus bill for some eight of the subcommittees which had not been able to turn out bills before.

It continues to be mystifying to me, after being here for 24 years, that we cannot complete our work in a more orderly way. It is a regrettable fact of life, but it is a fact of life that everything is done in the Congress at 11:59 if there is a 12 o'clock curfew. Some of it does not get done until after midnight, until after the curfew. We have worked the bill every which way. A couple years ago, we had the bill concluded on June 29, floor action by the Senate. But by the time we get through the complex conferencing—and I do not ascribe any fault anywhere, to the other body or to this body—it seems to be endemic of the way we do our business.

But we are about to have a bill filed. There have been various predictions. The most recent one is for 5 o'clock. We will see if that happens. There are so many items that our constituents come to us for, and they want included in the bill. It is such a complex and difficult matter. We struggle with it. And the House will take it up some time tonight. I do not know how anybody can intelligently or intelligibly read that bill, let alone to comprehend it, through the limited period of time which is available.

In struggling through the bill this year, for my subcommittee, there are many disappointments, but the biggest one is on the National Institutes of Health. I focus particularly on the tragic death of my Chief of Staff, Carey Lackman Slease, who died July 14 at the age of 48, and a very close personal friend, Mrs. Paula Kline, who died on November 11, just a few days ago, at the age of 54. The deaths are marked by the tragedy of the fact they could have been eliminated had we devoted sufficient resources to medical research.

I call this to the attention of my colleagues in the Congress and the people who may be watching on C-SPAN or

who may read the CONGRESSIONAL RECORD of the importance of renewing our efforts, in a wealthy country with a gross national product of \$11 trillion and a Federal budget of \$2.4 trillion, that we could do better than \$28 billion for this very important subject.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I ask unanimous consent that the pending matters be set aside and I be allowed to speak 10 minutes on another matter, and that the 10 minutes count against my hour under the cloture rules.

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

INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Mr. DAYTON. Mr. President, on another matter, I am rising to support the conference report that is being proposed for the Individuals with Disabilities Education Act. I support this legislation. I commend the conferees for their efforts to streamline, make less bureaucratic and less time-consuming, the current IDEA legislation and its administration.

In Minnesota, my home State, special education teachers—in fact, some of our most experienced special education teachers—are leaving that field, leaving special education classrooms, because of the bureaucratic burdens, the time-consuming paperwork.

They lament the time they cannot spend in those classrooms, the time lost to working directly with schoolchildren, in order to have to comply with all of the State, Federal, and local school district reporting requirements.

Those reporting requirements are mostly well intended, and one layer of them is mostly necessary and appropriate. However, the second and the third layers of bureaucracy have become duplicative, redundant, excessive, and oppressive.

Sadly, previous attempts to “reform” this bureaucratic overload have resulted, according to many of the teachers in Minnesota, in more, not less, reporting requirements, more forms, more time required away from their classrooms and from their students. No one benefits from that bureaucratic overload—not the special education students, their families, the teachers, or the taxpayers.

Like too many other well-intended programs, we try to micromanage the process, rather than analyze the results. We tell educators, or other experts in their fields, how they ought to do their jobs, rather than telling them to do their jobs as efficiently and effectively as possible, and then report to us and to our constituents their progress—in this case, improving the educational attainments and ability of their students, and what they need from us to do their jobs even more effectively.

When IDEA was enacted back in 1975, there was opposition to it from some States and school districts and from some schools. But now, in my State,

schools and teachers are committed to doing special education as well as possible. We need to get out of the way and let them do it. So I hope this legislation will be a step in that direction—better yet, two or three steps in that direction.

Something else we should do, though—and we should have done it long ago, and certainly have done it during the last 4 years I have been here—is fully fund the Federal commitment to IDEA, to fulfill a promise Congress made 29 years ago—29 years ago, when it passed the special education mandate. Congress back then promised the States, promised local school districts and, most important, promised the children and parents of America that they would pay for 40 percent of the cost of special education. When I arrived here 4 years ago, that percentage was only 13 percent, less than one-third of the amount promised 25 years before. To his credit, President Bush has proposed in each fiscal year an increase in the amount of Federal funding for special education. To our credit, we have passed those increases, and even somewhat more, so that this year the Federal funding for special education totals 19 percent of total spending nationwide, which is an improvement, but is still less than half of what was promised 29 years ago.

That broken promise by the Federal Government cost my State of Minnesota nearly \$200 million this year. It has cost every other State special education funding. I am, frankly, mystified at why my five pieces of legislation—five times I have attempted to increase the Federal share of special education to that promised 40-percent level—have been defeated every time in the Senate. I am mystified—because I cannot believe that most other States and most school districts in America could not use that additional special education funding. In schools in Minnesota, the underfunding of the Federal share of special education results in local school districts having to make up those shortfalls either out of funding for other school programs for students, or by increasing local property taxes, because states and schools are being mandated by us to provide special education services. They are subject to lawsuits if they don't. But we are not providing them with the money to carry out that mandate.

This bill before us would not fully fund the Federal share for special education until the year 2011. Even then, that funding level is not assured. It may not be enough. It is not guaranteed. It is not made a requirement. The appropriations still have to come each year.

So we have, once again, evidence that we lack the proper priorities. We propose and pass tax cuts for the wealthiest Americans, and the President proposes to make them permanent. Some colleagues propose eliminating the estate tax, which affects 2 percent of the people in America, by 2010, and to

make that permanent starting in 2011. While some call that the death tax, special education is a life commitment, a lifesaving commitment. Yet, we will not make that lifesaving commitment to the schoolchildren of America.

I will try again next year, and I will keep on trying with my legislation to fully fund the Federal share of special education, which should be well within our reach financially. It is the right thing to do, and it is the necessary and moral thing to do, and it would serve well the interests of this Nation in the years ahead. I regret that it is not part of this conference report coming before us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. What is the parliamentary situation?

The PRESIDING OFFICER. The Senate is under cloture on the conference report to H.R. 1047.

Mr. LEAHY. I thank the Chair.

#### TRIBUTES TO RETIRING SENATORS

TOM DASCHLE

Mr. LEAHY. Mr. President, when the Senate concludes its business in the coming days, the congressional career of a remarkable man will come to an end. After 26 years of representing South Dakotans as their voice in Washington, Senator DASCHLE will be leaving the Senate.

His story is a classic one. As a young man from Aberdeen, SD, TOM DASCHLE graduated from South Dakota State University and immediately began 3 years of service in the Air Force of the United States. After his service, he got an early introduction to Washington as he went to work for Senator Abourezk, eventually returning to South Dakota to work out of the Senator's state offices.

TOM was elected to Congress in 1978 and went on to serve four terms in the House of Representatives before being elected in 1986 to the Senate.

After the resignation of George Mitchell in 1994, Senator DASCHLE won a very tight race for minority leader. I was proud to have supported him at that time. 1994 was a difficult year for our party and we had some serious soul searching to do. TOM displayed the strong leadership that was necessary to take Democrats in the Senate forward. That is why, after that first tight election for leader, he was reelected unanimously as leader each time thereafter. He has always been a man who radiates optimism and hope, making him an excellent face for our party.

I have known TOM since he first came to this body in 1986. I closely followed his Senate race against James Abdnor, and I was impressed by him. A few days after TOM won that race, he and his wife Linda joined my family in Vermont for Thanksgiving dinner. When they came to the farm, my mother said to me, “That is the nicest