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# ILL EFFECTS OF A WELL-INTENTIONED LAW: THE RIGHTS OF THE HANDICAPPED OVERLOOKED

Robert Burgdorf, Jr.,*

Indiana's Public Law No. 162, which was signed into law in 1972, is an admirable achievement. The statute consolidated and clarified the procedures to be employed by schools in suspending, expelling or excluding students. The rights of students were closely guarded through the clear enumeration of the requirements of due process in this area. Written notice, a relatively formal hearing, the right to be represented by counsel, the right to cross-examine witnesses, a written decision and record of the proceedings, and an appeal procedure are all specifically mandated by the law whenever a child may be suspended, expelled or excluded. The aim of the law was both to protect pupils from arbitrary decisions and, at the same time, give school administrators a definite means by which to dismiss pupils when it legitimately becomes necessary to do so.

In electing to explicitly set down the reasons for which a child may be barred from the public education system and in setting up procedural safeguards to insure that children's rights are protected, Indiana has shown great awareness of current trends in

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constitutional law and has proven itself to be in the vanguard of the states in the movement towards delineation of educational rights. Unfortunately, however, this well-intentioned statute is not an unequivocal good; through legislative oversight and some poor draftsmanship, it has been worded in such a way that it could have undesirable effects upon the rights of handicapped children.

Apparently, Act No. 162 was largely aimed at dealing with disciplinary difficulties. The inclusion of provisions relating to the "mentally or physically unfit for school purposes" (Sec. 6(c)) was only incidental, and little thought was given to the possible ramifications of these provisions. No malevolence was intended towards handicapped children, but here, as in many other situations, their rights were simply overlooked.

<u>Indiana Law Prior to P. L. 162</u>

To fully understand the effects and flaws of Public Law No. 162, it is necessary to be aware of the state of the law regarding education of the handicapped in Indiana prior to 1972. Indiana's basic policy towards education is set forth in the state Constitutional provision that the public education system shall be "equally open to all." (Ind. Constitution, Article 8, Section 1)[1] However, under the School Exclusion Bill (Chapter 215 of the Acts of 1963)[2] school superinten-

dents had the power to exclude mentally and physically handicapped children from the public schools:

> The school superintendent of any attendance district may, with the approval of and under limitations and regulations concerning the procedures and requirements for complete evaluation of children, to be established by the state board of education, exclude or excuse from school any child found mentally or physically unfit for school attendance, provided such approval shall be valid for no longer than the school year during which it was issued.[3]

The section did not state what obligations the state does or does not have to provide an alternate means of education to those children who are excluded. In other words, it was unclear whether "exclusion" meant simply exclusion from the regular public schools or whether it meant total exclusion from any form or program of a publicly-supported education. The rules and regulations adopted by the State Board of Education pursuant to the School Exclusion Bill provide that "an alternate plan for the child" must be submitted[4], but it was not mandated that this plan had to be other than referral to a private agency or facility.

In application, many handicapped children, particularly those who were severely and profoundly mentally retarded, were not provided with any alternative publicly-supported educational program upon their exclusion from the regular schools. Although the State

Board of Education Rules and Regulations provide for special education classes, homebound instructions, occupational therapy, physical therapy, experimental programs and other special programs, these projects were viewed as permissive undertakings by the local school corporations; there was felt to be no duty to provide an education for handicapped children.

The conclusion that the public school system can totally wash its hands of any obligation to educate the mentally and physically handicapped is of very doubtful legal validity. Not only does it violate Indiana's constitutional declaration that the public schools shall be "equally open to all" but it would also seem contrary to Article 1, Section 23 of the Indiana Constitution. That section states:

> The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Moreover, the practice of totally excluding a child from the public education system because he is handicapped is a violation of the Federal Constitutional guarantee of "equal protection." Such is the explicit holding of several recent federal court cases.[5] A state cannot provide a free public education for normal children without providing the same service for all handicapped children. However, in spite of the legal deficiencies of such a policy, the practical

reality is that public school administrators have totally locked many handicapped children out of the public education system. To date, this practice has not been challenged in the courts; judicial tribunals have not yet been given an opportunity to assure that Indiana's schools will be "equally open to all."

In 1969, the Indiana General Assembly moved to assure that the benefit of an education would be accorded to all of the state's children, and in particular to those individuals who had been excluded from the regular schools because of a mental or physical handicap. Chapter 396 of the Acts of 1969[6] makes the education of handicapped children mandatory. After July 1, 1973, all handicapped children are entitled to a free public school education which meets their special needs.

Thus, the situation immediately prior to the enactment of Act No. 162 was this: while there was a legislative promise of a totally inclusive educational system for the future, school administrators continued (probably illegally and unconstitutionally) to reject certain children because of their mental or physical handicaps.

## Problems Created by P. L. 162

Against the backdrop of previous legislation, it is well to examine the problems cause by Act No. 162 due to the flaws of the Act as it relates to the rights

of the handicapped. Hopefully, by examining these shortcomings in detail, such mistakes can be avoided in future enactments. It is the particular area of legislative draftsmanship that the oversights have been made.

1. The first difficulty encountered in No. 162 occurs in "Definitions", Sec. 1(g):

> "Expulsion" shall mean disciplinary action whereby a student is (i) suspended from school attendance for a period in excess of five (5) days, (ii) is suspended for the balance of a then current semester or current year, or (iii) is given other disciplinary action which automatically prevents his completing within the normal time his over-all course of study in any school in the school corporation. "Suspension" shall mean any disciplinary action whereby a student is suspended from school attendance for a lesser period than set forth in (i) and (ii) above. "Exclusion" shall mean an exclusion of a student from school attendance for a longer period than thus set forth.

a. "Expulsion" and "suspension" are both defined in terms of the word "suspended". Unless "suspended" and "suspension" are unrelated words, there is clearly a circular quality to these definitions.

b. "Exclusion" defined as "an exclusion" is undoubtedly circular. Moreover, the phrase "for a longer period than thus set forth" evidently refers back to Sections (i) and (ii) of the "Expulsion" definition. Therefore, the apparent meaning of the phrase is "for a longer period than: (i) a period in

excess of five days, and (ii) the balance of the then current semester or current year." "A period in excess of five days" is of indefinite duration, so "exclusion" cannot be defined by saying that it is for a period longer than such indefinite period. The second possibility is that "exclusion" refers to a period longer than the balance of the current semester or current year. Section 12(f), however, provides that "No expulsion or exclusion of a student shall be for a longer period than the remainder of the school year in which it took effect." If expulsion may be for the balance of the current year, the exclusion means a period longer than expulsion, and yet exclusion cannot be for longer than the balance of the current year, then just what does "exclusion" mean? A period of time both longer and shorter than the current year?

c. An additional problem with the definition of "exclusion" is that it is unclear whether or not "exclusion" is "disciplinary action". The phrase "disciplinary action" is incorporated in the definition of both "suspension" and "expulsion". Its absence in the definition of "exclusion" leads to some ambiguity. If "exclusion" was intended to be a type of "disciplinary action", then those words should have been used in its definition. Moreover, if "exclusion" is a type of "disciplinary action", then the only difference between the definitions of "expulsion" and "exclusion" is in

duration of time, a situation which clearly exacerbates the time problems noted above. If, on the other hand, "exclusion" is not meant to be encompassed by the phrase "disciplinary action", the language such as "action other than disciplinary action" would have made the meaning much more clear. Additionally, if "exclusion" means non-discuplinary action which is "for a longer period than thus set forth", another problem arises. What about non-disciplinary action which is for a shorter period "than thus set forth"? How do we classify that? It cannot be an expulsion or suspension, for they encompass only "disciplinary action". It cannot be an "exclusion", for its duration is too short.

2. The last part of Section 1 Definitions (g) provides:

> Where a student is assigned a special course of study, is enrolled in special classes or is given home-bound instruction, as permitted or provided by applicable law, he shall not be deemed to have been suspended or excluded from school attendance within the meaning of these definitions.

Section 6 provides:

> Any student may be excluded from school in the following curcumstances, subject to the procedural provisions of this chapter: ...c) Where any student is mentally or physically unfit for school purposes..."

The combination of these two sections is potentially devastating to the rights of the handicapped. Until Section 1(g) was enacted, Indiana law had never

stated that "exclusion" did not mean simply exclusion from regular classes. Since the exclusion contemplated in this Act means total exclusion from any form of publicly-supported instructional program, No. 162 strikes a grave blow to the fair treatment of handicapped children, and is of doubtful constitutional validity. As already noted, there is a very serious question whether handicapped children may be totally locked out of the public school system consistent with the equal protection clause of the United States Constitution. If the state of the law regarding what should be done with "excluded" handicapped children was unclear prior to Act No. 162, it is now clearly bad.

Complete exclusion is also directly contrary to the intention of the Mandatory Special Education Act[7] which aimed to provide a public education for every handicapped child, whether through regular classroom instruction, special classes, or through home-bound instruction. By providing for complete deprivation of any form of public education to those "mentally or physically unfit," Act No. 162 obviously undermines the expressed legislative intent of total inclusion.

3. A. Section 9 provides that certain procedures, including written notice and a formal hearing, must be followed before a student is expelled or excluded. The word "student" is nowhere defined. The remainder

of Article I, which was in effect prior to Act No. 162, employs the word "pupil", but "pupil" is likewise undefined. Although at first blush the meanings of these words appear fairly clear, ambiguity as to their exact scope has resulted in serious problems. Principals and school boards have ruled that "student" shall mean only those children who are actually enrolled in the schools. When a parent brings his child to the principal of a school and seeks admission, the principal may summarily rule to exclude him. If the parent claims that he is entitled to the procedures set out in P. L. 162, the principal is able to reply that the child has not yet been enrolled, so he is not a "student", and, therefore, he is not within the coverage of 162. The intent of 162, to provide a hearing before children are excluded, can thus be evaded entirely.

b. Another related set of problems concerns the question of a student's age. P. L. 162 sets out no age parameters for "student" and therefore gives no guidance as to the scope of coverage of the 162 procedural framework. Five year-old children are eligible for kindergarten; three year-olds are eligible for some special education programs; special experimental programs may be afforded to deaf children as young as six months of age; at seven, children are required by law to attend school -- but at what point

does the term "student" begin to apply? There are similar problems at the other end; the ages of sixteen, eighteen, and twenty-one are all of significance regarding the termination of educational programs, and adult education has no upper age ceiling.

Does a child of five who is excluded from kindergarten have the right to a hearing under Act No. 162? How about a one year-old deaf child who is expelled from an experimental program, or is simply not accepted into such a program. If a forty or fifty year-old person is expelled or excluded from an adult education class, does he have the right to invoke the 162 hearing mechanism? Such questions presently remain unanswered, but they could have been easily resolved in P. L. 162 by a clear delineation of who constitutes a "student" covered by the Act. Lack of clarity is especially serious in this area, because experience shows that many administrators tend to use these vagaries to the disadvantage of handicapped persons, i.e. to exclude them without any 162 hearing. It seems that a proper treatment of this matter would be to correlate the age parameters for the availability of a hearing under 162 with the age of a person's eligibility in a particular program. Thus, whenever a person is eligible for an educational program, he would have 162 procedures available to safeguard his rights.

4. Section 6 provides:

> Any student may be excluded from school in the following circumstances, subject to the procedural provisions of this chapter...c) Where any student is mentally or physically unfit for school purposes, subject, however, to the procedures set up under the provisions of I.C. 1971, 20-8-8-5, and to the limitations and regulations authorized to be established thereunder by the state board of education.

The "subject to" language in Subsection C has caused some problems. The probable intent of the Section was that the procedures described in 20-8-8-5 should be used in addition to the 162 procedures; the formal hearing required in 162 would thus serve as an additional safeguard to see that a child's rights were not being denied under the older process. However, some school boards have ruled that "subject to" means that the 20-8-8-5 procedures are a substitute for 162 procedures. Thus, if the older process, which simply calls for a complete mental, physical, social and emotional evaluation of the child, has been followed, the board may feel that the child is not entitled to any 162 hearing. Once again, we see that the language of the Act can be used to circumvent its purpose.

5. The definition of "exclusion" in terms of "an exclusion" has already been mentioned. The failure to spell out in any detail what type of action constitutes exclusion has been the source of a serious practical problem. Some principals, instead of stating that a

handicapped child is "excluded", simply place him on a waiting list. The parents are told that if a vacancy arises, then their child will be admitted. The child is provided no training or instruction during the interim. The waiting period may continue through the current school year and thereafter for an indefinite period. In effect, the child is deprived of his rightful education, but because such action is not declared to be within the meaning of "exclusion", he is probably not accorded the procedural safeguards set out in Act No. 162.

6. Another defect in No. 162 is that it fails to state who has the burden of proof. Does the school system have to show that the student ought to be suspended, excluded, or expelled, or does the student have to show that he should be included? If no evidence or insufficient evidence is presented, who wins? The answers to these questions may be determinative in many cases.

Constitutionally, the burden ought to be placed upon the school system to prove that there are sufficient reasons for the suspension, exclusion or expulsion. See e.g. Dixon v. Alabama State Board of Education, 294 F.2d 150 (C.A. 5th Cir. 1961). This principle has been specifically applied to handicapped children in Mills v. Board of Education of the District of Columbia, Civil Action No. 1939-71 (Dist. Ct. D. C.,

Aug.1, 1972), where the court stated that the school officials were to "bear the burden of proof as to all facts and as to the appropriateness of any placement, denial of placement or transfer." The same allocation of evidentiary burden should have been delineated in P. L. 162.

7. The Mills case, supra., underlines another flaw in No. 162. In Mills, the due process hearing procedures were accorded whenever there was a placement in special classes, a denial of such placement, or a transfer, and the parent or guardian registered an objection. The procedures set up under No. 162 apply only to suspensions, expulsions and exclusions. A child's welfare can be seriously impaired by his placement into an inappropriate program. The chances of misplacement are increased when, as is frequently the case, placement evaluations are based upon a single test of the child's abilities. A number of courts have had occasion to deal with the problems involved in labeling and "track systems" in education. See, e.g., Hobson v. Hansen, 269 F. Supp. 401 (Dist. Ct. D. C., 1967). It is apparent that a child's placement is a very serious matter; he ought to be afforded the procedural devices by which to challenge an improper placement.

8. Section 10 provides:

> The hearing examiner shall be any person on the school corporation's administrative staff, or its counsel, provided he (i) has not brought the

> charges against the student, (ii) will not be a witness at the hearing, and (iii) has no involvement in the charge.

Presumably, the basic goal of Act No. 162 was to create procedures which comply with the requirements of due process. Due process procedures normally assume that the person or group presiding over a hearing will be an independent entity and not an arm of one side or the other. Although provisos (i), (ii) and (iii) serve to prevent some blatant prejudices on the part of the hearing examiner, as a member of the school corporation's staff or as its counsel he can hardly be thought of as independent. The close interrelationship and cooperation between employees of the school system and the frequently bureaucratic organizational structure dictate that the hearing examiner will often be far from impartial. He has to judge between his friends, fellow employees and his bosses, on the one hand, and, on the other, a child and parents who will frequently be unknown to him.

It is doubtful whether a hearing by such a biased person can go any distance toward complying with the requirements of due process. In effect, such a procedure is little more than a reexamination and reaffirmation by the school system of one of its own decisions. This is hardly an adequate forum for the protection of rights guaranteed by the United States Constitution. The Mills case, supra., requires that

the hearing officer shall be "independent". He is to be paid for his services by the school system, "but shall not be an officer, employee or agent of the Public School System." If Act No. 162 is to have any effect insofar as compliance with the Due Process Clause is concerned, a similar mandate of independence should have been made.

9. The problems already discussed concerning the non-independence of hearing officers and the absence of a clear allocation of the burden of proof are magnified by the type of judicial review permissible under the Act. Section 12(d) describes the method of appeal which can be taken in a state court from the final action of a school board:

> Such appeal shall be initiated by the filing of a complaint which shall be sufficient if it alleges in general terms that the governing body acted arbitrarily, capriciously, without substantial evidence, unreasonably or unlawfully. The trial of the appeal, except as provided herein, shall be tried in the same manner as other civil cases. The defendant shall be the school corporation. . ."

Since the school corporation is the defendant and the child and parents or guardian are the plaintiffs, and the case is to be tried "in the same manner as other civil cases," the duty is upon the child and his representatives to prove by a preponderance of the evidence that the allegations in the complaint are true. This situation has two notable results: 1) The

burden of proof is upon the child and parents instead of upon the school system as would seem to be constitutionally required. See Problem 6, supra. 2) The allegation which must be proved is not that the decision of the school board is wrong, but that it acted "arbitrarily, capriciously, without substantial evidence, unreasonably or wrongfully"; according to No. 162 the court cannot reverse the school system's decision simply because it disagrees with the decision.

These effects would probably be defended on the ground that the court's function in this case is simply to review an administrative decision. In such a situation, the argument would run, the decision should be presumed valid, and only reversed where it can be shown that the administrative hearing body has abused its discretion. In fact, the terms, "arbitrarily, capriciously, without substantial evidence," etc. are the customary formulations used to describe the standards upon which courts may review the decisions of administrative agencies.

The analogy of decisions made under No. 162 and decisions of administrative agencies, however, does not stand up upon close examination. Administrative agencies are presumed to be independent bodies; as already noted, 162 hearing examiners are far from independent. Where there has been a fair adversary proceeding conducted before an impartial tribunal,

there is sufficient rationale for a presumption that the tribunal's decision is correct and should be subjected to only limited judicial review; such is manifestly not the case regarding hearings conducted under No. 162.

Moreover, courts are generally hesitant to meddle with administrative decisions because of the highly complex nature of the subject matter, e.g. atomic energy, interstate commerce, aviation, communication, etc., and because of the special expertise of the agencies involved. The decisions regarding suspension, expulsion, or exclusion are not so complex that they are not capable of resolution by the courts. In addition, if, as already noted, the burden of proof as to the necessity of suspension, expulsion, or exclusion should properly be upon the school corporation, a fair opportunity to be heard has not been accorded unless the burden is so laid. If, as in the No. 162 hearing procedure, the courts ought not presume that the decision is valid; quite the contrary, the decision should be presumptively invalid.

In short, the mere review by a member of the school system of a decision made by another member or group of members ought not suffice to: 1) shift the burden of proof from the school corporation to the child and his representatives, and 2) create a presumption that the decision is correct and can only be

set aside by proof of "abuse of discretion". In order to assure that children are not deprived of the protections of due process of law, court review of decisions made under P. L. 162 ought to be a trial de novo and the burden of proof should be placed upon the school system. The record of the hearing should merely serve as evidence at the trial.

Disproportionate Effect

It should be noted that while many of these flaws of No. 162 relate specifically to the handicapped, some of the shortcomings of the Act are general in nature -- their application is not limited to handicapped persons. Practically, however, a handicapped child is much more likely to be the subject of an exclusion than is a normal child. Handicapped children are often viewed as undesirable or, at least, less desirable as students. Often more difficulty is involved and more teachers are required to teach handicapped pupils than to teach those without handicaps. For these reasons, many school officials have shown much less reluctance to exclude a handicapped child than to exclude a normal child. Thus, any gaps in the procedural protections constructed by Public Law 162 fall more heavily upon the handicapped than upon other children. Having the greatest likelihood of being wronged, handicapped children need protective mechanisms most and are most seriously harmed by defects in these safeguards.

## Solutions

It is not difficult to find solutions for the problems outlined here which result from the wording of Act No. 162. In many instances, the mere statement of the problem suggests the manner in which it could have been avoided. Slight changes in drafting may reap great benefits in the workability and effectiveness of the statutory scheme presented in 162. The specific corrections to be proposed here will be numbered in the same manner as the problems have been numbered above, so that the numbered solutions will correspond to the problems which they are designed to solve.

1. The definitions of "exclusion", "suspension", and "expulsion" should be reworked so that the distinctions between them are clearly spelled out.

a. "Expulsion" and "suspension" should be defined in terms of a word other than "suspended". "Barred", "dismissed", "prohibited", "stopped", or some such word should be used instead.

b. and c. "Exclusion" should be completely redefined so as to remove ambiguity. A formulation such as the following might be used:

> "Exclusion" shall mean non-disciplinary action whereby a student is barred from school attendance.

Such wording avoids confusion as to time distinctions between exclusion, expulsion and suspension. Any non-

disciplinary action, no matter what its duration, which results in a child being barred from school attendance constitutes an exclusion.

2. To avoid Act No. 162 having an incidental effect of sanctioning total exclusion of handicapped children when such an effect is contrary to the federal constitution, the Indiana constitution, and the intent of the Indiana legislature as expressed in the Mandatory Special Education Act[8], two possibilities present themselves. The first would be to declare that "exclusion" only means exclusion from regular classes. Therefore, the decision to grant an exclusion would not relieve the state of its obligation to provide the child with an alternative educational program, e.g. special education classes, home-bound instruction, etc. The second alternative is to delete mental and physical unfitness from the grounds for exclusion under Section 6. This solution is probably more in line with the natural connotations of the word "exclusion", and would leave the process of exclusion untouched regarding other grounds for its operation.

3. "Student" should be defined by a formula such as "any person who is enrolled in any educational program of the school corporation or who, according to his age and place of residence, is eligible for such a program." Thus, if a person is of the proper age and lives in the school district, he could not be expelled

or excluded without a hearing under No. 162.

4. Instead of 162 hearing procedures being "subject to" evaluation procedures of Indiana Code 1971, 20-8-8-5, the former safeguards should be "in addition to" the latter.

5. It ought to be stated that "exclusion" includes placement on a waiting list and any other nondisciplinary action which bars a child from attending school.

6. The burden of proof as to the necessity for a suspension, exclusion, or expulsion should be explicitly placed upon the school system and school officials.

7. 162 procedures should apply not only to exclusions, suspensions and expulsions, but also to any placement in special classes, a denial of such placement, or a transfer, to which the parent objects.

8. As in the Mills decision, it should be provided that the "independent" hearing officer is to be paid for his services by the school system, but that he is not to be an officer, employee or agent of the school system.

9. Appeal to the courts from a decision of the school board should be a trial de novo with the record of the hearing serving only as evidence. At this trial the burden of proof should be on the school system to justify its chosen action.

## The Basic Mistake

Underlying each of the imperfections which we

have noted in Public Law No. 162 is a more basic problem which is reflected in many other pieces of legislation. There is in Act No. 162 no positive intent to shortchange handicapped children; flaws in the Act were certainly not the result of malice towards the handicapped on the part of draftsmen or legislators. The rights of handicapped persons were simply overlooked. Too often the handicapped are an invisible minority. Too often we forget, or would like to forget, the serious and complex problems faced by those whose bodies or minds are not quite the same as ours.

If legislation is to benefit all citizens, special attention must be paid to the difficulties encountered by handicapped people. Statutes designed to assure fair and equal treatment for all must not be permitted to serve as vehicles for treating handicapped persons unfairly and unequally.

## An Answer: N.C.L.H.

In order to alert politicians, legislators and the general public to the legal rights of handicapped persons, a National Center for Law and the Handicapped has been created. The Center, which is funded by the Department of Health, Education and Welfare, officially opened on September 1, 1972. In addition to HEW, the creation of the Center was sponsored by four organizations: the Family Law Section of the American Bar

Association, the National Association for Retarded Children, the Council for the Retarded of St. Joseph County, and the University of Notre Dame.

The basic functions of NCLH as outlined by its Board of Directors are three: to educate the public, to assist in litigation, and to assist in the drafting and enacting of legislation. The educative function will include seminars and workshops for those concerned with the rights of the handicapped, and acting as a clearing house for information as to litigation, legislation, and other matters affecting handicapped people.

When education and informal persuasive efforts fail to safeguard the rights of the handicapped, then the second function of NCLH, assisting in litigation, comes to the fore. Such assistance may run the full gamut from gathering preliminary data and weighing the advisability of bringing a court suit to the actual arguing of cases and to keeping watch to see that a court's judgment is actually being implemented.

Recent months have been a fruitful time as to judicial decisions concerning the rights of handicapped persons. Especially in the areas of the rights of persons in institutions and the right of the handicapped to an equal education, important precedents have been established. NCLH is working to assure that these judicial breakthroughs will be applied nationwide.

Thirdly, NCLH is anxious to cooperate with legislators, draftsmen and interested groups in the drafting of legislation which accords fair treatment to handicapped people. Regarding Senate Act No. 162 specifically, NCLH is in contact with draftsmen and legislators, and has pointed out the flaws discussed above; hopefully the errors will be removed through corrective action by the legislature. If, on the other hand, No. 162 is not corrected, and if it or any other statute is used to discriminate against handicapped people, NCLH may be forced to become involved in a suit to protect the constitutional rights of the handicapped. The constitutional infirmities involved in Act No. 162's shortcomings have already been noted: in light of recent decisions, it appears that federal courts will not be hesitant to strike down parts of the statute which are applied so as to treat the handicapped discriminatorily. Hopefully, in the future the efforts of NCLH and other such groups will prevent errors such as those in P. L. 162 from occurring at all. Over the years, the governmental institutions in the United States have been made aware of the rights of racial minorities, women, and other previously unprotected groups. It appears that the time has come for recognition of the rights of handicapped persons.

FOOTNOTES

1. Indiana Code 1971, Chapter 20-8-9-5.

2. Indiana Code 1971, 20-8-8-5.

3. Indiana Code 1971, 20-8-8-5.

4. State Board of Education, Commission on General Education, Rule S-4, Section 2, adopted November 8, 1963, filed December 13, 1963; _Burns Indiana Administrative Rules and Regulations_, Section 28-505-2.

5. _Mills_ v. _Board of Education of the District of Columbia_, 348 F. Supp. 866 (D.D.C. 1972); _P.A.R.C._ v. _Pennsylvania_, 334 F. Supp. 1257 (E.D. Pa. 1971) and 343 F. Supp. 279 (E.D. Pa. 1972).

6. Indiana Code 1971, 20-1-6-14 through 20-1-6-17.

7. _Ibid_.

8. Chapter 396 of the Acts of 1969; Indiana Code 1971, 20-1-6-14 through 20-1-6-17.