A History of the Due Process Procedure in Special Education

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A HISTORY OF THE DUE PROCESS PROCEDURE

IN SPECIAL EDUCATION

by

Nancy Hablutzel

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VITA

The author, Nancy Hablutzel, was born in Chicago, Illinois on March 16, 1940. She is married to Philip Hablutzel, and the mother of Margo Lynn and Robert Paul.

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CHAPTER I

INTRODUCTION

The changes in special education in the United States in the last quarter century are significant, both in their scope and in their nature. Theories of special education, types of classrooms in use, methods for teaching children with special needs, have all changed dramatically. Among the most important changes is the importance of special education itself. Some of this new importance comes from the fact that there are so many more people involved in the field, and so many more children receiving the services. Another part of this difference, if not most of this difference, stems from developments in the law related to special education. The evolution of this law has come about over the last century, gradually at first, and then over the last quarter-century, slowly at first, and then extremely rapidly.

Initially in this country, only those with considerable means were able to educate their children, always at great expense to the family, and frequently at great distances from home. It was at the end of the eighteenth century that schools began to be available locally for children to attend, paid for with public funds. Beginning in 1817 with the founding of the American School for the Deaf (Nazzaro), schools were opened for the first time for people with handicaps, previously excluded from any form of schooling. In the beginning, these schools were residential schools, each teaching children with a
single handicap. Children from all over the country would travel great
distances to enroll in these schools, and since they were few in
number, only a very few lucky children could be served by them. Some
schools like this survive to this day, such as the Central Institute
for the Deaf in St. Louis, the Gallaudet College for deaf
undergraduates, and the Hadley School for the Blind. Each school of
this type serves one segment of the handicapped population, and, while
the education is excellent, there is an unfortunate lack of reality in
the isolated circumstances in which the children are trained. It took
a long time for educators to realize that there was something to be
gained, both for the handicapped and the "normal" children in the
school, when children with handicaps are placed in the same school as
those without.

This was certainly not the case a century ago. In 1893, the
Wisconsin Supreme Court (Beattie, 1893) allowed a school system to
expel a handicapped child based solely on the testimony that her
appearance was upsetting to the other children and to the teacher! The
change from this position to the present one did not come about
directly in the area of special education (Children's Defense Fund,
pp.3-4.) True, there has been a gradual increase in the numbers of
school systems offering special education facilities and classes for
handicapped children (Cottle, pp.51 ff), with a marked increase since
World War II(Silberman, p.159), but the great changes came about as a
result of the civil rights laws which extended the rights of children
to receive an education. The first major cases were those based on the
race of the child(Brown,1954). Once the racial cases had been decided,
and it was clear that the courts would support a finding that children were entitled to an education as a right, handicapped children and their parents began to insist that they had the same rights, and the courts agreed with them (PARC, 1971; Mills, 1971).

After several court cases decided in the favor of the handicapped children and their parents, the right to education of handicapped children was codified by the U.S. Congress (see Chapters II, III, and IV). The earlier acts which provided education and training of handicapped individuals, such as the Vocational Education Amendments of 1968, the Economic Opportunities Act of 1972 (Headstart), the Higher Education Amendments of 1972, The Rehabilitation Act of 1973, and the Developmental Disabilities Assistance and Bill of Rights Act of 1974, all have been superseded in one way or another by two major acts, The Rehabilitation Act of 1974 (particularly Section 504) and The Education of All Handicapped Children Act (P.L. 94-142).

Section 504 of the Rehabilitation Act of 1974 is broader in scope than P.L. 94-142. It prohibits discrimination against an "otherwise qualified individual" on the basis of handicap in a number of areas, of which education is only one. P.L. 94-142, on the other hand, is a bill limited to education, and provides that funding shall be limited to school districts which comply with the Act. For those districts which choose to forego funds and not comply, if they are part of the state school system which receives funds, then that state system has the responsibility for monitoring compliance within the district. If the district is not providing services to its handicapped children, then the state must provide it or lose its funding.
All this is based on an idea of constitutional due process. The due process clause of the fifth and fourteenth amendments to the Constitution of the United States provide that no one may be deprived of "property" without due process of law and courts have held that children have a "property" right to education (see Chapter II). Additionally, the courts have held that children are entitled to the "equal protection of the laws" guaranteed by the Fourteenth Amendment when it comes to applying to school or being placed in a classroom in which they are able to learn.

The due process to which children are entitled varies by the situation involved. Due process is not a constant "thing" (Bartholomew) but varies greatly according to the situation. There are two "kinds" of due process, substantive and procedural. Substantive due process refers to a situation in which a person is deprived of something to which he has a right, in this case, a "free appropriate public education." Procedural due process refers to the acceptable procedure used in any given situation to provide an individual with notice of an action to be taken and a hearing in which he can contest it. If procedural due process is fairly given, then a person can be deprived of something in which he has a property right, and it is not a violation of his rights. All of the cases which have arisen in special education involve, in one form or another, these issues:

1. Was the child given the "equal protection of the laws", i.e., was he given the same chance to receive a free, appropriate public education as every other child in his district?

2. Was he deprived of his (property)right by being denied either
a free education or one appropriate for him?

3. If he was deprived of something, was it done in such a way as to protect his rights?

This paper is a history of the evolution of the rules above and the procedures for following them which have been established by case law and by statute. The cases which led to these rules were a fascinating mix of discipline and racial segregation cases, and not until recently did handicapped children appear in the courtroom. Since they have, however, the changes in the law have been dramatic. Parents, teachers, administrators, and other school personnel need to understand the evolution of the law which led to the current "due process" rules, because only by understanding how the laws got to be the way they are is it possible to understand the laws themselves well enough to assure compliance within a school district. For this reason, this paper examines the first cases involving due process in schools, the early cases involving handicapped children, and then the current laws providing due process procedural protections for handicapped children.
The term "due process of law" is defined by Black's Law Dictionary as:

Law in its regular course of administration through courts of justice. 3 Story, Const. 264, 66. 'Due process of law in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs.' Cooley, Const. Lim. 44.

It is clear from this that the exact form which "due process" may take will vary according to the circumstances.

"Due process of law" did not originate with the American colonies, but came to us from the English Magna Carta. It was originally termed the "law of the land" in the Magna Carta, referring to the common law and the statutes then existing in England, and was incorporated along with the rest of the body of English common law into our Constitution, and into our common law. It is well-settled that the term is difficult to define precisely (12 Am. Jur., Constitutional Law, Sections 567-575) but is generally held to include all the steps essential to deprive a person of life, liberty or property... (Jenkins, 689).

The elements essential to due process are notice, a hearing, and an opportunity to defend (Snyder). It has also been held that a requirement of due process is that the law operates equally to all persons affected by it (Off). It was originally a protection from
arbitrary action by the Crown (12 Am. Jur., Constitutional Law, Section 568), and continues to be a protection from arbitrary action by a governmental agency (Nebbia), and it is in this sense that it is applied to the cases involving children in schools. It is the evolution of this protection for children, first from racial discrimination and then from discrimination on the basis of handicap, that has brought the educational laws of this country to where they are now.

The cases which led to the establishment of requirements for "due process" safeguards in special education are based on earlier cases which were concerned with other areas of children's rights. The first of these are the cases which established education as a constitutionally protected civil right. These cases were primarily concerned with racial segregation in the schools. The second group of cases were those concerned with discipline of students, and the standards to be met by the school before a student could be suspended or expelled. As these two groups of cases developed, the courts set very clear standards which had to be met before a student could be deprived of the right to attend classes. As the rules evolved, it became clear that what had been a privilege a century earlier had become a right, and that the courts would not allow that right to be abridged.

The changes came about rapidly, largely the result of changes in the society as well as in the makeup of the legislatures and courts. As recently as 1919, courts had actually gone on record as supporting the exclusion of a handicapped youngster from the local public school, on the theory that the child's presence would be disturbing to both the
teacher and the other students (Beattie, 1919). At that time, there was absolutely no thought that the child involved was being deprived of the right to an education, nor was there any suggestion made that there should be a provision for any form of alternative placement. By 1974, it was estimated that two million children in the United States were excluded from school for various reasons (Cottle, 1974). The most common reasons for exclusion were handicapping conditions and discipline problems. As the courts began to look at education as a right rather than as a privilege, they began to require that the schools observe "due process" before students could be excluded.

The most famous of all the civil rights cases was one involving segregated schools, Brown v. Board of Education of Topeka, Kansas. Brown was actually a consolidation of four cases, all heard in Federal District Courts in different parts of the United States, and all appealed to the Supreme Court as involving a matter of Constitutional rights. The plaintiffs were school children ("minors of the Negro race") who were attending segregated schools in their home school districts. Until the time of Brown, segregated schools were not considered to be illegal so long as the facilities were judged to be "equal". This was based on the "separate but equal" doctrine which had been adopted by the Supreme Court in 1896 in the case of Plessy v. Ferguson (Plessy, 1896) which involved not education, but transportation.

Between Plessy and Brown, the Court had had several cases before it in which it was asked to decide whether segregated schools were constitutional, but the other cases had been settled without so
squarely addressing the issue as was done in *Brown*. In the first of
the several cases along this line, a Negro citizen of Missouri was
rejected by the state's law school when he applied for admission, but
was offered tuition so that he could attend law school in another
state. This was done in accord with the state law at the time. He
sued in state courts to be allowed to be admitted to the state school.
The state courts refused to rule in his favor, and he appealed to the
Supreme Court. In that case, the Court ordered that he be admitted,
saying that the issue was not that he could be educated by other
states, but that he should be educated by his own state on a basis
equal to white students within that state (*Missouri ex. rel. Gaines
v. Canada*, 1938). In the case next brought before the Supreme Court,
the justices once again failed to address the issue of the
constitutionality of applying *Plessy* to education, while still deciding
the case in favor of the plaintiff (*Sipuel*, 1948).

In 1950, the Court was presented with two cases which presented
different aspects of the same issue. That issue was the limitation of
the state's power to discriminate on a racial basis as a result of the
Equal Protection Clause of the Fourteenth Amendment to the
State Regents* (*McLaurin*, 1950). In the first of these two cases,
*Sweatt*, the plaintiff had applied for admission to the Law School of
the University of Texas and his application had been denied because he
was a Negro. The Court did not deal directly with the applicability of
the *Plessy* "separate but equal" doctrine to public education, but
instead, skirted the issue by deciding that the plaintiff had not in fact been offered "equal" facilities.

In Sweatt, the Negro plaintiff had been offered admission to the law school at the Texas State University for Negroes. The law school there was in the process of being started at that time. Almost none of the books had arrived for the library. The faculty consisted of four members of the faculty from the University of Texas Law School who were essentially "on loan" to the new law school. The new school was not accredited. By contrast, the law school at the University of Texas was fully accredited, had a library with over 65,000 volumes, and a full-time faculty of sixteen, plus some part-time faculty. The Court commented quite properly that it was considered among the nation's ranking law schools.

In addition, the Court considered the intangibles that were involved such as the reputation of the faculty and administration, the prestige of the alumni, and the fact that many of the contacts which are so necessary to the practice of law originate during the law school years. Given all these factors, the Court held that the opportunity to attend the Negro law school did not constitute an equal educational opportunity for the plaintiff. Thus, while holding that the Fourteenth Amendment Equal Protection Clause required that the plaintiff be admitted to the University of Texas Law School, the Court did not yet go so far as to re-examine Plessy in terms of the Fourteenth Amendment and racial segregation in the schools, which the plaintiff had urged, but the Court was moving in that direction. In McLaurin, a Negro doctoral student in Education was allowed by Oklahoma statute to take
courses in the white institutions whenever there was not a comparable class available to him at the Negro institution but, (also by statute) the instruction could only be offered on a "segregated basis". This meant that the plaintiff had to sit at a "Negroes only" table in the cafeteria, and had a seat in a row of desks reserved, also, only for Negroes. There had also been a restriction on his library privileges, in that he had been forbidden to use a desk in the library, but that restriction had been removed after he had filed the suit, but prior to the hearing by the Supreme Court. The Court, which considered this case at the same time as it considered Sweatt, held that it was not an equal education to separate a doctoral student in this manner, and that not only he but also his future students would be adversely affected if this were allowed to continue. Again, they had succeeded in finding that the education being offered was not equal, but had not gone so far as to determine that "separate but equal" could not apply to education. That point was finally reached in Brown.

In Brown, all the school districts involved had gone to great lengths to be sure that all the facilities had been equalized. Salaries of teachers, buildings, textbooks, curricula, and credentials of teachers had been carefully considered and were well-balanced between the Negro and white schools in each district. Thus, as the Court observed, the "tangibles" were equal (Brown, 1954, at 485).

For the first time, the Court was forced to address the issue of the extension of Plessy to public education squarely. The Court first took note of the fact that by that time, education had become "perhaps
the most important function of state and local governments." The court stated:

Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, must be made available to all on equal terms.

Then, relying heavily on psychological and sociological evidence presented at trial, the Court held that education had become a right and not a privilege, and that it therefore was a requirement of the Fourteenth Amendment Equal Protection Clause that children be given equal educational opportunity. This was the first time that it had been made clear that the Supreme Court viewed education as constitutionally protected.

In a companion decision rendered on the same day, the Court held that the Due Process Clause of the Fifth Amendment applied to education (Bolling, 1954). Given these two cases, the way was beginning to be established for parents of handicapped youngsters to demand that their children, too, had a right to education.

The other group of cases that laid the way for the present requirements for due process for children requiring special education was the group of cases involving discipline of students. The most often-cited of these, and the one that continues to have an impact even in special education, is Goss v. Lopez (1975). In this case, several
high school students in Columbus, Ohio had been suspended from their schools as a disciplinary measure. They sued the school district, charging that they had been deprived of their Fourteenth Amendment rights by being suspended without a hearing either prior to the suspension, or immediately following the suspension. The district court agreed with the students and ordered the school district to reinstate each of them and to expunge their records of any mention of the incidents.

The Ohio School Code at the time allowed a principal to expel a student or to suspend him for up to ten days for disciplinary reasons. The student's parents had to be notified within twenty-four hours of the action taken and the reasons for it. For a student who was expelled, the Code provided for a hearing at the request of either the child or his parents. They could appeal the school's decision to the Board of Education, and were entitled to a hearing at a board meeting. The Board could reinstate the child after the hearing, if the members of the Board felt that was the appropriate action.

For the children who were suspended, there was no right to either a hearing or an appeal provided by the Code. The Columbus School District had not published any regulations providing procedures for either a hearing or an appeal in the cases of students who were suspended for disciplinary reasons. The nine named plaintiffs who brought the class action suit in Goss were all children who had been suspended, most of them for a ten-day period as the result of their participation in a protest or other demonstration.
The District Court held that the school district had an obligation to provide students with written procedures to be followed for disciplinary actions, which procedures should provide notice and a hearing to all students. The court held that case law at the time would:

1. allow immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers, or school officials, or damage property.

2. require notice of suspension proceedings to be sent to the student's parents within 24 hours of the decision to conduct the them.

3. require a hearing to be held, with the student present, within 72 hours of his removal.

The court also held that the students, at the time of the hearing, could hear the statements in support of the charges, make any statements they might wish in mitigation, speak in their own defense, and the school did not have an obligation to allow the student to be represented at the hearing by counsel.

In reviewing the decision of the lower court, the Supreme Court gave a thorough discussion of the principle of due process in education in general. First, they answered the claim by the school district that there was no need for due process to suspend students, because they did not have a constitutional right to receive an education. The Court said that the right to a public education did not have to be given in the Constitution in order to be a constitutionally protected right. Once the right to a free public education was given by an outside
source, in this case by state statute, then the right to that education was protected for all school children by the Constitution, and they could not be deprived of that right. The Court pointed out that constitutionally protected interests are normally "not created by the Constitution. Rather they are created and their dimensions defined' by an independent source such a state statutes or rules entitling the citizen to certain benefits." (Roth, 1972 as quoted in Goss). The Court also relied on their prior decision in Brown to reiterate that the deprivation of the right to schooling was a serious event in the life of a child, even if it was only for a period of ten days or less. The Court also noted that the "good name and reputation" of the child were involved and to allow the school to make permanent entries on the record of a child without due process could permanently "damage the students' standing with their fellow pupils and their teachers as well as interfere with later opportunities for higher education and employment."

The Court did not go as far as the students would have liked, however. They did not give the students the right to counsel at a suspension hearing. They specifically said that this would be entirely too cumbersome, time-consuming and expensive, given the "countless" brief disciplinary suspensions nationwide. What they did require, however, was that the child and his parents be given immediate notice of the charges against him, and that if he denies the charges, he is entitled to an explanation of the evidence against him, as well as a chance to present his own side of the story. They said also that they did not give the suspended student the right to rebuttal witnesses,
cross-examination, etc., for the same reasons that they did not require
the presence of counsel. They also said that to make the procedure
longer and more formal might, in fact, make it a less effective part of
the school discipline process.

The Supreme Court made it clear that it was limiting the due
process requirements for suspensions of ten days or less because they
were so common and, even though they deprived the students of the right
to attend school for a period of time, not permanent.

In the cases involving the expulsion of students as disciplinary
measures, the Court has taken a similarly generous stance. It is clear
that, where the student has been guilty of a form of misconduct, the
Court wants the school to bear the burden of proving the charges and of
allowing both notice and a hearing, but does not want to impose a very
strict standard, recognizing the duty of the student to assist in his
own education by observing certain minimum standards of behavior, and
also recognizing the burden to the schools of having to cope with
unruly and uncooperative students.

In the case of students expelled from a state university for
misconduct (Dixon, 1961) the Court held that the students should be
given notice, which notice should include a specific statement of the
charges and the grounds which would justify expulsion if proven. The
Court said that in different cases, the nature of the hearing would
vary "depending upon the circumstances of the case" and in the case at
bar, the charges would require a hearing at which the administrative
body or Board of the university could hear both sides of the dispute in
detail. This is contrasted with the case of a student being dismissed
for academic reasons, in which case such hearing would not be necessary (Horowitz, 1978). The Court felt that while it was not necessary in an expulsion to have a full judicial hearing with cross-examination of witnesses, it was necessary to inform the student of the witnesses against him and to allow him a chance to present some witnesses on his own behalf. This seems to reiterate the general feelings of courts in suspension and expulsion cases that what really matters is that the notice and hearing requirements be fundamentally fair, and commensurate with the severity of the penalty sought (Due, 1963). The courts have dealt with the basic issues of disciplinary suspensions and expulsions on many occasions, and each time have decided the cases in such a way that indicates that the "due process" necessary was to be determined by balancing the severity of the sanctions sought against the procedural safeguards provided by the school (Tinker, 1969 and Tibbs, 1971).

As the problem of "due process" for students became more of an issue nationwide, and particularly as the litigation in this area increased, school administrators, school boards, and teachers became increasingly concerned with setting standards which could be followed, and which would provide written guidelines for dealing with discipline of students. Several groups drafted "model" discipline codes (Appendix C). It remained for the courts and then the Congress to establish specific written requirements for "due process" procedures for one group of students, the "exceptional" children.
CHAPTER III

THE EARLY CASES INVOLVING THE RIGHT TO DUE PROCESS FOR CHILDREN IN SPECIAL EDUCATION CLASSES

In 1971 and 1972, there were two major cases in which children in special education were found to be entitled to education as a civil right, and to be entitled therefore to "due process" procedural safeguards before being excluded from school, or placed in a special class. These two cases, known as Mills (1972) and PARC (1971, 1972) were the first in which the courts had set out elaborate procedures to be followed by the schools for identifying and correctly placing special education students.

PARC was a case brought by the Pennsylvania Association for Retarded Children (PARC) and the parents of several retarded children against the Commonwealth of Pennsylvania. At that time, the Pennsylvania statutes provided for compulsory education of all children from eight years of age until seventeen years of age, but had several other provisions which had, in fact been used to keep retarded children out of the schools. First, the compulsory school ages had been used to postpone admitting retarded children to school until they were eight, or to expel them as soon as they reached seventeen. In addition, there were provisions in the law that relieved the Board of Education of the responsibility for educating any child who was certified by a psychologist to be uneducable and untrainable (which then shifted the burden of care for that child to the Department of Welfare, which had
no provisions for educating or training such children) or to indefinitely postpone the admission to school of any child who had not attained the mental age of five years (which many retarded children would never attain) or to excuse from compulsory attendance any child whom a psychologist found could not profit from schooling (PARC, at 282). Those provisions had been used to exclude retarded children from the schools. At the time the suit was filed, all the named plaintiffs were excluded from the public schools. The contentions of the plaintiffs were:

1. that these statutes offend due process because they lack any provision for notice and a hearing before a retarded person is either excluded from a public education or a change is made in his educational assignment within the public system.

2. the two provisions violate equal protection because of the premise of the statute which necessarily assumes that certain retarded children are uneducable and untrainable lacks a rational basis in fact.

3. because the Constitution and laws of Pennsylvania guarantee an education to all children, these two sections violate due process in that they arbitrarily and capriciously deny that given right to retarded children.

The plaintiffs did not argue that the provisions of the School Code (Section 1330, excusal from attendance, and Section 1326, definition of compulsory attendance age) were on their face unconstitutional, but rather that they violated "due process" and
"equal protection" as they were being applied to exclude retarded children. The parties signed a consent agreement in 1971 which dealt with the above issues. It was stipulated that the section referring to the compulsory school attendance age was designed to forgive parents for not sending children to school if they were not yet eight or were more than seventeen, and was not meant to excuse school authorities for excluding children. It was also agreed that children who were certified to the care of the Welfare Department would be provided with training "appropriate to the capacities of that child." The Commonwealth and the parents agreed that, since the Commonwealth had undertaken to provide education to all children between the ages of six and twenty-one, it would have a duty to place "each mentally retarded child in a free, public program of education and training appropriate to the child's capacity."

Additionally, the Section 1330 provision that had been used to exclude children who had not yet attained a mental age of five years, was agreed by the parties to mean only that the school authorities could refuse to admit such children to a regular school in the lowest primary grade (as opposed to a special school). There was also a provision in the statute that had been used to deny tuition for private schools to retarded children who did not also suffer from another disability (the section was worded in such a way that it only provided tuition to private schools for children with certain named physical handicaps) and it was agreed that that provision would no longer be applied in that manner. The defendants also agreed not to deny homebound instruction for retarded children simply because they did not
also have a physical impairment or because their condition was not temporary.

The case was not settled without considerable objection, particularly from local school districts. Ultimately, however, the Court amended the settlement and entered an order settling the case. The order had the following provisions:

1. The schools could not apply the above-mentioned statutory provisions in such a way as to deny any mentally retarded child access to a free public program of education and training.

2. The schools could not deny tuition (and maintenance where necessary) to any mentally retarded child on any basis other than the terms used for other exceptional children.

3. The schools could not deny homebound education to retarded children merely because they lacked a physical disability or because their condition was not temporary.

4. The schools would provide every retarded person between six and twenty-one years of age with access to a free public program of education and training appropriate to his learning capacities, as soon as possible, but in no event later than September 1, 1972 (this order was entered on May 5, 1972).

5. In any school district which had a free public program of pre-school education, every mentally retarded child of the same age was to be provided access to a free public program of education and training appropriate to his learning.
capacities, not later than September 1, 1972.

6. Each district would provide notice and an opportunity for a hearing to any child who is, or is thought to be, mentally retarded.

7. Each district would re-evaluate the educational assignment of every mentally retarded child at least every two years, annually if the parents requested it, and each time would provide notice and the opportunity for a hearing.

The Amended Stipulation which was entered into on February 14, 1972, includes much of the terminology and many of the notice and hearing provisions that were adopted by the Congress in P.L. 94-142 (Appendix B).

The court, in deciding some of the issues in PARC, relied heavily on the Brown argument that education was a constitutionally protected right, granted by the states, and that all the children in the states were entitled therefore to an equal educational opportunity, and that they could not be deprived of this opportunity except by due process of law.

The difference between the very lenient due process procedures prescribed in the disciplinary cases and the very stringent procedures in PARC and also in Mills, and later in the Statute, appears to be based on the different balance between the rights to be protected and the reasons for abridging the rights. In the instances of the disciplinary cases, the students had done something affirmative which caused action to be taken against them. In the matter of handicapped
children, the schools had not, in many cases, even afforded the children an opportunity to begin attending school, and in no cases had an action by the child been responsible for his exclusion from school. The decisions are written in such a way that it becomes clear from reading them that the courts were clearly offended at the callous treatment given to defenseless children who already bore the burden of a severe handicap, and therefore set far more stringent rules for their protection than they did for children who, although still allowed the benefit of rebuttal, were disruptive and had caused some form of turmoil in the schools of their own volition.

The second major case in special education in the early seventies was Mills v. Board of Education, (1972), another class action suit brought against a school district (Washington, D.C.) for excluding children who were handicapped. In this case, all the children were not retarded, but some were emotionally disturbed, behavioral problems, or hyperactive. The class was to include, in addition, children who were speech impaired, learning disabled, blind, and deaf and who were not receiving an education at that time. It was estimated by the plaintiffs that there were 22,000 such children at that time in the school district, and that 18,000 of them were not receiving a program of special education. These figures were based on estimates made by the school district itself to the Department of Health, Education and Welfare (1971). All seven named plaintiffs were residents of the school district and were denied free appropriate public education by the district. Some of the children had been able to be accepted by a private school but were unable to afford the tuition. All the
plaintiffs were black, but that was not an issue and the class represented was not limited to blacks. Many of the children had been in school and had been expelled or reassigned without any hearing or without notice.

The defense in this case was one that has been thought of many times since by school boards and taxpayers alike in this country, but one which has not as yet convinced a court, that special education was simply too expensive. The school district said it could not afford to educate the children involved in the manner they were asking without taking a significant amount of money from the educational resources then being used for the "normal" children in the district, thereby causing the education of more able children to suffer greatly. In fact, in Mills, the argument was made that to divert funds in that manner would be contrary to the intent of the Congress when it provided the funds to the district, and therefore illegal.

The Court noted that it had already held that constitutional protections could not be denied citizens on the basis of the expense involved (Goldberg, 1969).

The Court then rendered its decision, which in many ways resembled the agreement in PARC, particularly in the requirements for notice and a hearing, which were carefully specified. It also gave the district an affirmative duty to identify all children in the district who were exceptional (members of the plaintiff class) within thirty days of the order. The district was ordered to advertise widely the availability of placement for special students, so that children and their parents who had previously been unaware of the possibility of
receiving special education at the expense of the school district, or children who had previously been denied education at the expense of the district, would know that the services would now be available.

The district was required to report within forty-five days the names and placements of the class members so identified, the programs which they had been given, and the numbers of hearings that had been requested, and the determinations which had been made from those hearings.

The hearing procedures were spelled out very specifically, and as in PARC, they provided for notice, a hearing before an impartial hearing officer, and for the hearing to take place before a child could be moved into a new educational placement. The parents were given the right to see records, to present evidence at the hearing, and to cross-examine school personnel. These requirements were in many ways the same as those set out in the settlement in PARC, and are again, in many ways the same as those that were codified in P.L.94-142.

Both PARC and Mills established very clearly the rights of the handicapped to an education, suitable to their abilities, and at public expense. The requirements for the due process to be given to a child and his parents prior to placing him in a special education setting were extremely stringent. It was clear in both cases that the courts were unhappy with what they felt was the unfair and unequal treatment given to the handicapped children by the school districts. The requirements for due process were far more strict than those set out in the disciplinary cases, where the courts were not so clearly sympathetic to the students.
In both Mills and PARC it is clear that the courts feel it is necessary to have strict, written procedures to be followed in the matter of placement of handicapped children. It is also clear that they have established standards for the education of the handicapped children of the United States. These standards are specified in both cases: the child is to receive a free, appropriate public education. That terminology, first used in PARC and Mills, became a part of P.L. 94-142, and is the standard by which education for the handicapped children of this country is now measured.
CHAPTER IV

THE LEGISLATIVE RESPONSE: P.L. 93-112, SECTIOm 504, and P.L. 94-142

Immediately after the decisions in Mills and PARC, as well as some other scattered suits throughout the United States (MARC, 1974) the members of the U.S. Congress began to receive considerable pressure from the various parent groups representing parents of handicapped children, and from groups representing the handicapped themselves. It became clear that there were two ways this problem of schooling for the handicapped could be resolved. The first would be for the lobbyist groups to file lawsuits similar to Mills and PARC in every jurisdiction, in order to establish case law in each place that had a slightly different school code or method of dealing with handicapped children. The second would be for the Congress to pass a federal statute mandating requirements for special education on a nationwide basis that would follow the guidelines set out in Mills and PARC. It was clear that the second was by far the more expeditious and financially conservative method.

The initial response to the decisions in PARC and Mills had been a flurry of filings of lawsuits nationwide, as groups supporting expanded educational opportunities for the handicapped began to realize that the climate among the members of the federal judiciary supported their cause. Now, these same groups began to pressure legislators to
introduce measures that would establish uniform requirements for special education in the various parts of the country. This move was considered a faster and less expensive means to the same end, and would also circumvent the difficult problems that might have been faced by groups pursuing lawsuits in states where there were few or no requirements for special education, and where the courts might have taken a very different view of what was required. This would have resulted in even wider differences in education provided for these children from state to state than there already were, or else numerous cases which would have had to be pursued all the way to the Supreme Court. Even then, with the varying state statutes, it was quite likely that they could have been interpreted so that there would still be large differences from state to state. Looking at the great variations existing then, the groups representing the handicapped and their parents decided that the most useful route for them to take was to pursue the possibility of uniform federal legislation for special education (Hearings, pp.227 ff).

The results that the various groups were seeking came slowly, and in pieces. The first major piece of legislation to be enacted which was directly supportive of handicapped education was the Rehabilitation Act of 1973, P.L. 93-112. This was the law that required that all programs receiving money from the federal government refrain from practicing any form of discrimination against the handicapped. The law has several parts. One prohibits discrimination against the handicapped by those contracting with the federal
government (Sec. 501), another by federal agencies themselves (Sec. 503) and a third by agencies receiving federal funds to assist in their operation. It is the last of these, Section 504, which has been used to force the states to provide special education for all of the children who are in need of it.

This Act was first introduced in the House of Representatives by Carl Vanik of Ohio as an amendment to the Civil Rights Act of 1964 (42 USC 2000 et seq.) (117 Cong. Record 45974-5). It was introduced in nearly identical form in the Senate by Senator Hubert H. Humphrey (118 Cong. Record 106-7). These two measures were made part of the then-pending Rehabilitation Act of 1973 (P.L. 93-112, 29 USC 794). The Section reads, in pertinent part:

No otherwise qualified handicapped individual in the United States, ...shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance...

After the bill was enacted, many of the groups which had lobbied so long and hard for its passage were disappointed by the response of the schools. They had expected that the combined effect of the previous court decisions and the new legislation would be to open all kinds of programs for handicapped youngsters in the United States (Cottle, 1976). Instead, there was little response. A few forward-looking states, and in some cases only certain school districts within states, began to respond with programs which, while not necessarily exactly like those described in Hills and PARC, were certainly more within the
spirit that they intended (Hearings, pp. 203 ff) but by and large, there was very little response to encourage the parents and the handicapped adults who had worked so long and hard to win the right to an education for America's handicapped children. (Hearings, pp. 243 ff). There was considerable confusion about whether handicapped children and their right to an education were in fact intended to fall within the scope of the Rehabilitation Act. In 1974, Congress amended the Rehabilitation Act, and in so doing clarified their definition of handicapped to include "physically or mentally handicapped children who may be denied admission to federally supported school systems on the basis of their handicap." (S. Rep., pp. 6388-9). After more waiting time, and no further improvement in the educational programs offered, or the appearance of the regulations which should have been forthcoming from H.E.W. for the implementation of the Act, and even a lawsuit against the Secretary of Health, Education and Welfare (Cherry, 1976) the concerned groups decided to demonstrate the need more graphically. A series of sit-ins, involving large numbers of wheelchair patients as well as other handicapped individuals, were staged in Washington, D.C. The proposed regulations, which were opposed vehemently by most school districts, who feared extensive and expensive overhauls to their special education programs, were finally signed in 1977 (42 Fed. Reg. 22676, May 4, 1977). This finally gave effect to Section 504, which has been held to extend the right to education to handicapped children, just as Brown extended it to black children (Hairston, 1976, Mattie T., 1977, and Tatro, 1980). This meant that children who were handicapped could not be excluded from schools without being given "due
process of law" before they were removed. It was the Education for All Handicapped Children Act, P.L. 94-142, which spelled out clearly just what those due process rights would be.

P.L. 94-142 began working its way through the Congress in 1972, at which time the Senate Subcommittee on the Handicapped began what was to be several years of extensive hearings in major cities nationwide. The transcript of the hearings totals several thousand pages (Hearings, pp. 1972 ff). In the course of the hearings, the senators heard testimony by parents, parent organizations, teachers, administrators, handicapped individuals themselves, and representatives of state educational agencies where programs were already being provided who thought that their experiences would be useful to others. The Bill eventually evolved into S.6 and after its passage in 1975 was known as P.L. 94-142. The full effect of the Act, requiring total compliance by all school districts receiving federal funds of any sort, was to require that every child identified as handicapped was to receive a "free appropriate public education." The act's implementation was delayed until September 1, 1978 so that school districts would have time to hire teachers, locate children in need, and develop programs. The school districts were given the responsibility for locating all children who were handicapped, and for educating them from the age of three years until the age of twenty-one years (42 Fed. Reg 42474, August 23, 1977). The regulations identified and described the children who were included in the definition of "handicapped", and also specified the procedures necessary to locate and serve these children.
It was these regulations which first set out clearly the procedures which were to be followed by the school districts in order to protect the "due process rights" of handicapped children. The procedures are very similar in all respects to the procedures outlined in the settlements of PARC and Mills, as well as several "smaller" cases which had arisen during the time between the first two major cases and the issuance of the regulations. In those cases, the settlements had been based in great measure on the Mills and PARC settlements (MARC).

Two essential ingredients of "due process" in any type of case, regardless of what the right is that is involved, are notice and a hearing. In order for the rights of an individual to be preserved, it is essential that regardless of what it is that he is to be deprived of, he must be given notice that he is to lose something, and a chance to challenge the loss at a hearing (Nebbia). The type of notice which must be given as well as the kind of hearing which must be held vary according to the severity of the proposed deprivation. In the case of handicapped children in the schools, they are being deprived of what is seen as their right to an education. Therefore, the Congress attempted to spell out the procedures which it felt were necessary for the schools to follow before removing a child from a regular setting and placing him in special education, before changing his special education placement, or before removing him from the public school altogether. Some of these procedures are based on the earlier cases involving suspensions and expulsions, and some on Mills and PARC. Some are
refinements which occurred during the process of the extensive hearings which were held.

One provision which surfaced during the Senate hearings (Hearings, pp.203 ff) and which many people expected to see implemented was a requirement that the child be represented at a hearing by a guardian ad litem. The theory was that, in many cases, neither the parent nor the school would adequately represent the actual best interest of the child when it came to discussing placement. An example used was that of the fairly severely retarded child who was becoming difficult for his parents to manage. The parents in such a situation often push to have the child placed in a residential treatment center (otherwise known as an "institution") while the school district, aware that under P.L. 94-142 it would be paying the entire cost of this placement, would push strongly to keep the child living at home and attending school in the regular public school, perhaps in a special classroom. In the early discussions of P.L. 94-142, it was expected that it would be required that in such situations a guardian ad litem would be appointed to represent the child's position, which would very likely be someplace in the middle (i.e., a special school placement but living at home). After the passage of the Act, but before the publication of the final regulations, the American Association on Mental Deficiency held a workshop to explain the new law to advocates and attorneys, and at that time it was presented with the guardian ad litem provision (AAMD Workshop, 1975). By the time the regulations were published, however, that provision did not appear, and it is assumed under the current regulations that the parents represent
the best interests of the child as long as the child is a minor or incompetent, and a guardian *ad litem* is only provided in the event the parents are unwilling or unable to act. In that case, it is usually a person from a state agency, in Illinois the Division of Children and Family Services.

With the exception of that provision, the regulations were much as expected. They provide that, in order to receive funding for the schools, the school districts must prove that they are in compliance with the requirements of P.L. 94-142. It was the financial "teeth" in the Act which finally forced the school districts to alter existing programs or to provide new ones where little or no education had been provided for these children in the past.

The regulations specify the steps that a school district must follow in order to provide "due process" on making placements, or in changing placements. They also provide a detailed procedure to be followed in the case of a disagreement over a placement. This is what is known as the "due process hearing" procedure. (20 U.S.C. 1415)

The basic elements of the requirements of due process procedures are as follows:

1. The parent must be given written notice prior to identification, placement, or change of placement of a child by the local education agency (LEA).

2. The parent must give written consent before the child can be evaluated for placement in special education, or before the child can be placed.

3. The notice to the parents must contain:
a. complete notice of the parents' rights under the Act.
b. an explanation of the procedural safeguards available to the parents under the Act.
c. a complete description of what action the LEA is proposing to take, and the reasons for it as well as any other proposed courses of action the LEA may have considered and their reasons for rejecting them.
d. descriptions of any and all tests, procedures, forms, records or reports which are used by the LEA in making its decisions.
e. any other factors which the LEA has considered in making this decision.

4. This notice to the parents must be in their language, or one they understand completely, and must be written in terminology which the general public could understand (this provision has been interpreted by many to mean that these parents must understand it).

Once a parent has received notice of the proposed placement for the child, and has consented to the evaluation, he does not forfeit his continuing rights to procedural safeguards. After the evaluation is complete, the Act requires that a multi-disciplinary staffing be convened to discuss the results and to plan the educational future of the child. The parents must be given the opportunity to be present at the staffing, and all the procedures, tests, etc., must be explained to them. In case a child is already in a special education placement and is being moved to another placement, the parents must have the same
notice (Doe, 1976). It is at the multi-disciplinary staffing that the individualized educational program (IEP) is written, and both the parents and the school representatives must sign it. It has been suggested that this document is a "contract" of a legal nature between the schools and the parents, but it is quite clear from the Congressional History of the Act that this is not so (Cong. Hist., pp. 3 ff). The parent also is given the right to an independent evaluation of the child at public expense under certain circumstances. If the parent disagrees with the evaluation provided by the LEA, then he may have an independent outside evaluation at public expense. The LEA has the right, however, to initiate due process procedures under the Act, and if they are able to show that their evaluation is correct, then the parent still has the right to an independent outside evaluation, but not at public expense. (20 U.S.C. 1415 (b)(1)(A).

The procedure for appealing any decision which is not agreeable to both sides is carefully detailed in the regulations (20 U.S.C. 1415 et seq.) This procedure is what has come to be known as the "Due Process Hearing" procedure.

Either the parent or the LEA may initiate a hearing procedure. The hearing must be held within forty-five days of the request (although there are certain provisions for an extension of this time by the hearing officer), and the decision must be rendered and mailed to the parties within that period of time. The place of the hearing must be reasonably convenient for all parties. If the parents are not fluent in English, then an interpreter must be provided for them. If they are deaf, a sign language interpreter must be used.
Each party in a hearing has the right to counsel and to advice of experts in special education or the other aspects of care of the handicapped that may be involved. Each party may present evidence, cross-examine and confront witnesses, and compel the attendance of witnesses (by subpoena). Either party may prevent the introduction at the hearing of any evidence of which they were not given notice at least five days in advance of the hearing. This provision allows both sides time to answer evidence presented. There is a right to a written or electronic verbatim record of the hearing (a tape or a court reporter's transcript) and to written findings of fact. After the written findings of fact are obtained, the LEA must submit them for review to the state advisory panel after removing names, addresses, and any other personally identifying information. If the parents wish, the child may be present at the hearing, and the hearing may be open to the public. (20 U.S.C. 1415 (d)). The hearing officer is to be an impartial person, and the specific procedure for the selection of a hearing officer has varied from state to state (See Chapter VI). A person who works for or closely with the LEA is not qualified to act as a hearing officer (Compochiaro, 1978).

If the parties do not contest the decision of the hearing officer within thirty days, then that decision is final. If one party does not agree with the findings of the hearing officer, that party may ask the State education agency (SEA) to review the findings, and the SEA must review all the findings and mail their decision to the parties within thirty days. Under certain circumstances an appeal may not be available to the state agency (the regulations do not say under what
circumstances, but it would appear most likely in the case of a state agency that has elected to forego P.L. 94-142 funds in order to avoid some of these procedures. In that case, the action would be proceeding under Section 504 of the Rehabilitation Act, and some of these procedures would not be available). If that should occur, or if the school or the parents disagree with the findings of the SEA on review, then either party may appeal by filing a civil action in state or federal court. For the purposes of the filing in a federal district court, the matter is considered to be a federal cause of action, so that there is no dollar amount requirement for the court to have jurisdiction (20 U.S.C. 1415 Sec. 615 (e) (2)). The court has access to all the records and transcripts, as well as the ability to hear additional evidence if needed. It renders a decision based on the preponderance of the evidence. As in other civil proceedings, there is a right to appeal to a higher court.

During the time the placement, diagnosis, or other issue disagreed about is being resolved, the child stays in the placement he previously had unless both the parents and the SEA can agree to another interim placement. If he is applying for initial admission to school, he is placed in the public school until the dispute can be settled. The exception is that for children who pose a danger to themselves or to others, the school may follow its usual emergency procedures. It is necessary, of course, that these procedures follow the guidelines set forth by the earlier cases involving suspension and expulsion of students for disciplinary reasons. In short, then, the due process procedures outlined by the regulations implementing P.L. 94-142 are
meant to safeguard the procedural due process rights of the child. The complaints that a child has been wrongly excluded, diagnosed, or placed which are the subject of a due process hearing, appeal, or court proceeding are to protect the substantive due process rights of that child (Cong. Rec., Nov. 19, 1975, pp. S 20432 ff).
CHAPTER V

SELECTED CASES SINCE THE PASSAGE OF THE STATUTES RELATING TO THE EDUCATION OF THE HANDICAPPED

Since the passage of Section 504 of the Rehabilitation Act (Section 504) and P.L.94-142 there have been numerous cases in the courts in this country filed on behalf of handicapped children, all asking the courts to clarify certain provisions of the statutes. In most cases, the issue involved has been the "related services" provision of P.L. 94-142. This provision requires that the schools provide the children with "related services" necessary in order for them to be able to profit from the education they are being offered. The act lists specifically such items as transportation, speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment, counseling services, medical services necessary for diagnosis and evaluation, school health services, social work services within the school, and parent counseling and training (34 C.F.R.300.13). Also, the act requires the schools to provide any other developmental, corrective, or supportive service necessary for the child to benefit from special education (34 C.F.R. 300.13 and Comment). The lack of clarity of this last provision is what has led to so much litigation. Obviously, the parents have been asking the schools to fund as much in the way of related services as possible, and school districts are reluctant to do
so. Some of these services may clearly be those which would benefit the child in other situations as well, and the schools have said they were not therefore primarily educational in nature, but the courts have held that that did not matter and that the intent of the act was not to limit related services to those which were only school related (Tokarcik, 1981). The argument of the courts has been that to deny these related services is in effect a denial of the due process rights of the child because it prevents him, without notice and a hearing, from being able to profit from his educational experience (Tatro, 1981).

Schools have become increasingly worried over the possibility of the expansion of the rights of children, and therefore the expenses of school districts as these cases have developed, and the courts have liberally interpreted related services. In a recent case, the United State Supreme Court was first called upon to rule on this issue. The case involved a young girl, Amy Rowley (Rowley, 1982) who is deaf but has a minimal amount of residual hearing. Her parents insisted she be provided with a sign-language interpreter for all her classes, even though she was receiving other help and doing extremely well in the classroom. The lower courts had supported the parents' position, but the Supreme Court reversed, holding that since she was doing better academically than the average child in her grade, and progressing easily from grade to grade, it was clear that Amy was benefitting from the education she was receiving, and the school was providing adequate personalized services for her. They went on to say that the P.L. 94-142 did not require that each student be educated to the maximum
potential of his ability, but only that they receive adequate educational opportunities, and Amy was clearly receiving an adequate education. This decision was viewed with great relief by school districts, especially after some of the other very liberal interpretations that the P.L. 94-142 had been receiving in other courts.

One other related service against which the school districts had fought, and on which they have apparently lost, is clean intermittent catheterization (CIC). Children with spina bifida, who do not have bladder control because of injury to nerves below a certain level in the spine, must be catheterized every few hours on a regular schedule to prevent the buildup of urine and a resulting urinary tract infection. The school had claimed that this was clearly a medical service and could not be performed by school personnel. The parents said that unless the child was catheterized every four hours, she could not attend school, and would therefore be denied the free appropriate public education to which she was entitled. The district court in Texas (Tatro, 1981) agreed with the school, but the Fifth Circuit reversed, holding that without CIC the child could not attend school, and that made it a related service to be provided by the district. At least one other court has reached the same conclusion, but with slightly different reasoning (Tokarcik), holding that CIC was "occupational therapy" necessary to provide the child with an educational opportunity equivalent to that provided to her non-handicapped peers.

Another related service issue which is even more expensive to the districts, and also less easy to define as a service, is psycho-
therapy. In P.L. 94-142, the definition of related services lists "psychological services" but does not specifically mention psychotherapy, and it mentions psychological services in the context of differentiating between it and medical services, so that it is not at all clear what was intended in the way of psychological services. The regulations are more explicit, but still exclude the term "psychotherapy" so this has continued to be a source of disagreement between parents and schools. In several cases, the courts have held that psychotherapy is a related service, as it is often necessary in order for a child to be able to profit from the special education he or she is receiving (In the Matter of the "A" Family, Gary B., Papacoda).

In a recent Illinois case, a child was placed in a residential setting in which he received an integrated program encompassing both his psychological and educational needs (Walker). The Appellate Court upheld the lower court's finding that the educational and psychological services were inextricably integrated.

In a recent and extremely important Illinois case, the Illinois Supreme Court had before it a case involving a seventeen-year-old girl who was in a mental hospital for treatment of a suicidal depression. The parents and her psychiatrist together petitioned the school district to pay the entire cost of her medical care, saying that she could not possibly be well enough to benefit from an education until she had recovered from her illness. In her case, there were complicating facts. She had dropped out of school at sixteen, and her mother had re-enrolled her just prior to asking the school to pay for her hospitalization. The school said that they would be happy to provide
an education for her, and would supply a private tutor for her just as soon as she was well enough to see one. The parents and the psychiatrist argued that this was not sufficient, as she needed the psychiatric care in order to get to the point where she could begin to learn. A further complicating factor was that she would soon reach her eighteenth birthday, which would terminate her right to a free public education if she were not in special education, but that right would continue until she was twenty-one if she could convince the court that she was in fact eligible for special education. The decision disappointed many who had hoped that the Court would find in favor of the school district, rather than setting a precedent which could have cost this district approximately $120,000.00 per year for this child alone, but which would also allow this kind of care for others like her, placing an intolerable financial burden on the schools of Illinois. The Court chose not to address the issue of whether this hospitalization was a necessary related service, but remanded the case to the circuit court for a further determination based on its (the Supreme Court's) finding that the hospital to which the girl had been admitted was not on the approved list of providers of the Governor's Purchased Care Review Board, and therefore could not serve as a provider of medical care (Claudia K, 1982). This issue is not, therefore resolved yet in Illinois.

A similar issue, and one often litigated is the provision of residential care to severely handicapped children. Obviously, this is much more expensive than providing classes within the regular school
system, even if they are special classes, or in a self-contained school for special children (Update, 1982). The problem is in determining whether the residential placement is required for educational or non-educational reasons. The Congressional History of P.L. 94-142 is quite clear in stating that there are some needs which are clearly non-educational in nature and that these need not be provided by the LEA (S.Rep., 1975 at 22). Unfortunately it is not always clear on the facts of which services are for which purpose and the courts have decided many similar cases in attempts to clarify this issue. In the first major case addressing this issue (North) the court held that the child's multiple disorders requiring residential placement made it impossible to separate out the physical and emotional needs from the educational needs and ordered the school district to pay the entire cost of residential placement for the child, rather than just place him in a self-contained classroom in the public school system as the school district had wanted to do.

In several other cases, the courts have followed the North reasoning that one cannot separate adequately the parts of a child, and that if it is necessary to meet the physical and emotional needs of the child in order to teach him, then that burden must be borne by the school district (Kruelle, Erdman). This would appear to be a judicial expansion of the original provisions of P.L. 94-142, which state specifically that if the child would need the placement regardless of his educational needs, then it is not an educational placement and should not be provided at school district expense. P.L. 94-142 clearly states that school districts are responsible only for those
placements necessary for the education of a child (34 C.F.R. Sec. 300 and 302, 20 U.S.C. Sec. 1413 (a)(4)(B)).

In summary, the cases which have been heard since the passage of the legislation providing education for handicapped children have been focused largely on the matter of those "related services" which must be provided under the Act to handicapped children so that schools do not deprive the children of their right to a free appropriate education, without their due process rights being preserved. There has been a consistent trend in the courts to find that many extensive and costly services are necessary to children in order for them to benefit from education, and that these must be provided at school district expense if the rights of the children are to be preserved. This has not been expanded to include provision for an absolute maximum education in accord with the potential of the child.
CHAPTER VI

THE ILLINOIS IMPLEMENTATION OF THE LAW

The law in Illinois implementing P.L. 94-142 has followed very, very closely the federal regulations, the cases, and the Congressional history of the Act. The rules for the administration of Special Education (Rules, 1979) give the specific procedures for initiating the due process hearing procedure in Illinois.

First, the schools are charged with all the responsibility for notifying parents of all pending actions and for conferring with them in compliance with P.L. 94-142 and its regulations. The specific procedure for initiating the due process hearing procedure under the regulations on Illinois are as follows:

1. The request for a hearing is made to the local school district in writing, including the reasons for the hearing and all other pertinent information.

2. Hearing requests are limited to one a year, and within 10 days of notification of a proposed placement, if the purpose is to disagree with a placement.

3. The school district must notify the Illinois Office of Education (IOE) by certified mail within five school days of the request, and request the appointment of a hearing officer. There are specific requirements as to what must be in this notice (see Appendix A) and a copy of this letter must be sent to the person who requested the hearing.
4. If the district does not honor the request for a hearing, it must so notify the parents within five days, in writing, stating reasons for the denial.

5. The parent may appeal directly to the IOE, and the State Superintendent may order a hearing or other appropriate measures.

6. If the request is sent to IOE, a list must be provided within five working days of five trained impartial hearing officers, one of whom will be selected to conduct the local hearing. The requirements for these officers are contained in the Rules, Title Ten, Section 6 (see Appendix A).

The selection of the hearing officer is made in the following way (in Illinois):

1. The parents receive the list of five prospective hearing officers and strike one name.
2. The school strikes a second name.
3. This process continues until one person is left. He or she then becomes the hearing officer.

The hearing officers in Illinois are trained by IOE for the job of conducting hearings. They are also required to attend re-training and updating meetings on a regular basis. Most of the hearing officers in Illinois are not attorneys, although some are. The requirements for this position are one of the larger areas in which specific state regulations have varied.

Within five days of the selection of the hearing officer, he or she sets the time and place for the hearing. It is to be at a time and
place mutually convenient to the parties but in no event more than fifteen days after the selection of the hearing officer. This time may be extended up to another fifteen days if the hearing officer wishes, and longer if both parties agree.

IOE is responsible for informing the parents of their rights during the hearing (counsel, evidence, etc.) not less than five days prior to the hearing. The regulations in Illinois (Title Ten, Section 7, Appendix A) follow exactly those in the federal regulations.

The hearing is not to be considered an adversary proceeding, and the rules of evidence do not apply. It appears from some of the available synopses of the hearings held under the first two years of P.L. 94-142 that some of the attorneys did not abide by this understanding. It seems that some of the hearings have resulted in adversary-type proceedings, especially in the aggressive cross-examination of witnesses. The Congress was wise in its discussion of this issue, holding the opinion that whatever went on at the hearing, there was still a child involved who would be attending school in the district in the future, and that the aim was for the parents and the school to work together, and not against each other (Cong. Rep., pp. 227 ff). One reason for the requirement that the rule of evidence need not apply was that the Congress realized that in such a situation there might be many people useful to the decisions to be made, and especially with what might be "soft" information about a child, but which certainly might be excluded as either irrelevant or hearsay if the rules were used, but which could be extremely useful in the type of determination to be made in a due process hearing.
The hearing officer must render a written decision within ten days of the hearing, and it is binding unless appealed.

The decision may be appealed to the ISBE with a completed ISBE appeal form and five copies of the transcript of the hearing. The child's placement may not be changed pending either a hearing or an appeal. The exceptions are those previously mentioned.

For a state-level appeal, a hearing panel is convened. This panel consists of attorneys and trained educational personnel of the IOE. The panel will review the record, the procedures, and may compel the appearance of witnesses and require additional information. Further regulations for this review are detailed in the Rules (Ill. Rev. Stats., Ch. 122, Sec. 2-3.38).

All hearings are reported to the ISBE in summary form, and the brief summaries are distributed to hearing officers, directors of special education, and some other concerned agencies. Other than this, there is no report made of the proceedings at due process hearings. It is not possible, for instance, for most school districts, parents, or other concerned persons to know either what the reasoning has been of hearing officers throughout the state, what the trends are in providing services, etc., for children in special education, or the other trends in special education decisions in the state unless these trends are passed along by word of mouth. The problem is obviously two-fold. It would be extremely useful for those involved in any way with special education in Illinois, whether it be as parent, teacher, student, litigator, advocate, or hearing officer, to know what the trends are in the state, and the rationale for the decisions that are being made. On
the other hand, there is great need to protect the anonymity of the minor children involved, and in many cases the families involved. It would seem, however, that the greatest lack in the implementation in the law in Illinois is the lack of a reporting mechanism which could quite possibly prevent some of the questions from being heard again and again. It is the express intent of P.L. 94-142 that the hearings do not set precedent.

Of the cases which were "reported" they followed the same basic lines as the cases discussed in Chapter V. The earliest cases included several in which the parents had apparently not been fully advised of their rights by the LEA. As time went on, and the school districts became more aware of their duties, and probably also more aware that they would be held accountable, these cases diminished radically in number. Subsequent cases have involved related services in more than fifty percent of the cases. The majority of the other cases involved a disagreement over the nature of the evaluation provided by the district, or the placement the child was offered. It would appear that a clear-cut procedure for ensuring that due process procedural rights are protected are in place, and that they are working to the definite advantage of both the children involved and the school districts. It is not so clear what the substantive rights of each child are, and in fact it may not be possible to determine this except on a case by case basis, but it would appear that the next due process assurances for children will be in the form of some further definition of their substantive rights.
Summary data available from ISBE shows a marked decrease in the number of due process hearings held in Illinois over a two-year span since the institution of the regulations for due process procedures. In the first six months of 1980, 333 hearings were held in Illinois, while in the same period of 1982, only 143 hearings were held. One reason for this decline would be that the backlog of complaints from parents who had been at odds with their child's school for a long period of time would have been heard in the initial period after enactment of the rules. Another reason, and probably the one that would account for most of the decline, is that, with procedures carefully specified, both the school districts and the parents would be able to determine in advance their rights and duties, and the very fact that the rules are available as guidelines may be eliminating many of the previously indifferent or disorganized procedures that had been followed in the administration of special education in some districts. (For summary data, see Appendix D)
CHAPTER VII

CONCLUSIONS

The changes in special education law in the last quarter century have been extremely significant. Children who were either excluded from school completely or provided with severely inadequate placements in the past are now provided with legal safeguards which allow them to be in school settings appropriate to their disability at the expense of their local education agency.

Some of these changes have resulted from changes in the law by which children were found to have a "property right" in their education. To deprive them of that right would require all of the safeguards provided by the Fifth and Fourteenth Amendments to the Constitution.

The Congress, following the trends set by the courts in this area, has mandated very carefully considered procedures to be followed for the placement of children in special education. Some of the terminology still needs clarification, and it is likely that court cases will continue in the areas not clearly enough defined in the statutes or regulations. While it is clear that there are certain very explicit procedures which can be followed to guarantee that children are protected as to their rights to procedural due process, it is not nearly so clear as to what services must be provided, and under what circumstances if a child is not to have his substantive due process rights violated.
It would be to the advantage of everyone concerned with special education if the meaning of "related services" could be more clearly defined. The courts have expanded this term's meaning so greatly; that the only logical consequence is an untenable financial burden to the school districts which are paying for these services. What has not yet been addressed is the issue of whether the appropriate state agency is being asked to pay for these services, or whether perhaps, the burden belongs with some agency other than the school district.

It is precisely for this reason that eight agencies of the State of Illinois were forced to attempt to agree on procedures for funding the care of children in the state. Since the agencies had not agreed, and had not formulated a plan which met with the approval of the U.S. Office of Civil Rights, charges had been instituted and funds withheld. In order to secure the release of the federal funds for the state, and to be released from the charges of violating both Section 504 and P.L. 94-142, the agencies issued a temporary "Memorandum of Understanding" (Appendix E) in which they agreed to make certain changes in their procedures on a temporary basis, and to continue to attempt to negotiate an agreement among themselves. This agreement is currently in effect, but the agencies are attempting to reach a permanent settlement. The matter will be referred to the legislature for a statutory resolution in the event that administrative and regulatory changes cannot be made to the satisfaction of the agencies involved.

It may be that services for children will be more limited in the future. Schools are losing funds at a rapid rate now, and voters are
consistently refusing to vote increases in the tax rate. If this should occur, the Supreme Court may have to re-examine the idea that funds should be merely re-allocated in providing funds for children in special education.

It is clear that the rules are basically good as they stand in terms of their ability to protect children's rights to procedural due process in special education. However, it also is becoming apparent that the rules are sometimes not followed. Walker was just such a case. If the school district and the mother had followed the procedures they should have, the case might well have ended long before it went to court. In that case the mother requested a due process hearing and the school did not grant it. There might still have been a disagreement on the facts of the case, but adherence by the district to proper procedure might have saved time and money for both sides, and would certainly have been to the advantage of the child.

It is worthy of note here that, while the cases in desegregation and those in special education began in the same manner, they have been resolved in very different fashions. In the area of desegregation, there has been little in the way of specific regulations for procedures to be followed in desegregating schools, and by and large, the problems have been handled on a continuing basis by litigation. There are several authors who have traced the development of this line of cases (Yudof, et.al., pp.413 f) On the other hand, in special education, there are such specific regulations available that the case law has been confined to definition of small portions of the regulations. There are some obvious differences between race and disability. Race
is easier to define and diagnose, it remains constant throughout the
life span of the child, and it is not subject to the many differences
in degree, severity, etc., that handicap is. It is also not something
which changes with educational treatment. Nevertheless, the compari-
sions between the two areas of law and their development would be a good
subject for a future research study.
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DEFINITION OF TERMS

ARTICLE I

1.01 Case Study:

shall be defined as a series of indepth multidisciplinary diagnostic procedures, conducted within an established time frame and designed to provide information about the child, the nature of the problems which are or will be affecting his/her educational development, and the type of intervention and assistance needed to alleviate these problems.

1.01a Consent:

The parent (s)

1. has been informed of all necessary information
2. understands and agrees in writing to carrying out the activity for which consent is sought
3. understands that the granting of consent is voluntary on his or her part and may be revoked at any time.

1.01b Continuum of Alternative Placements:

the availability of different types of educational environments, for example: regular classes, resource room classes, self-contained classes, day and residential special schools, home instruction, hospital instruction, and institutional instruction.

1.01c Counseling Services:

services provided by qualified personnel such as: social workers, psychologists, guidance counselors, or other qualified personnel.

1.02 Exceptional Children:

shall be defined as all children designated in Article XIV of The School Code of Illinois. These children may exhibit handicapping or exceptional characteristics ranging from very mild to very severe.

1.02a Individualized Education Program (IEP):

a written statement for an exceptional child that provides at least a statement of: the child's present levels of educational performance; annual goals and short-term instructional objectives; specific special education and related services; the extent of participation in the regular education program; the projected dates for initiation of services; anticipated duration of services; appropriate objective criteria and evaluation procedures; and a schedule for annual determination of short-term objectives.
1.03 Instructional Programs:
shall be defined as those activities which provide the principle elements of
the exceptional child's educational development at any given time. These
activities may include any or all of the following:

1. evaluation of the nature of the child's educational needs
2. amelioration of and compensation for visual, auditory, physical, speech
or other impairments
3. development of language concepts and communication skills
4. educational experiences which are adjusted in content, emphasis, rate or
location
5. modification of social skills or emotional adjustment.

For the purpose of these rules and regulations, an instructional program shall
be considered as one in which the exceptional child spends 50% or more of
his/her school day.

1.04 Language Use Pattern:
shall be defined as the language or combination of languages which the child
uses to conceptualize and communicate those conceptualizations.

1.05 Least Restrictive Environment:
to the maximum extent appropriate, handicapped children are educated with
nonhandicapped children. Special classes, separate schooling or other removal
of handicapped children from the regular educational environment occurs only
when the nature or severity of the handicap requires that education in regular
classes with the use of supplementary aids and services cannot be achieved
satisfactorily.

1.05a Multidisciplinary Conference:
a deliberation among appropriate persons for the purpose of determining eligi-
bility for special education, developing recommendations for special education
placement, reviewing educational progress, or considering the continuation or
termination of special education for an individual child.

1.06 Parent:
shall be defined as the natural or adoptive parent, a guardian, a person
acting as a parent of a child, or surrogate parent who has been appointed by
the Illinois Office of Education.
1.06a
Parent Counseling and Training:

procedures utilized in assisting parents in understanding the special needs of their child and providing parents with information about child development.

1.06b
Psychological Evaluation:

an individual evaluation of the child's functioning in the cognitive, psycho-motor, social/emotional, and academic achievement or aptitude areas using appropriately validated formal and informal tests and evaluation material.

1.07
Qualified Specialist:

shall be defined as those professional special education personnel who meet either the certification or approval requirements described in Article XII of these rules and regulations.

1.07a
Reevaluation:

a series of diagnostic procedures which are performed in accordance with Article 9.09 for the purpose of determining a child's continued eligibility for special education.

1.08
Referral:

shall be defined as a formal procedure, established by the local school district, by which a case study evaluation may be requested.

1.08a
Related Services:

the developmental, corrective, and other supportive services which are required to assist a handicapped child to benefit from special education. Such services include: speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes transportation, school health services, social work services, and parent counseling and training.

1.08b
Resource Programs:

specialized educational instructional services which are provided to the child for less than 50% of his or her school day.
1.09
School Days:

shall be defined as those days on which school is officially conducted during the regularly established school year. (See Illinois Revised Statutes, Chapter 122, Section 10-19)

1.09a
School Health Services:

services provided by a qualified school nurse or other qualified persons.

1.10
Screening:

shall be defined as the process of reviewing all children in a given group with a set of criteria for the purpose of identifying certain individuals for evaluations who may be in need of special education.

1.11
Social Developmental Study:

shall be defined as a compilation and analysis of information concerning those life experiences of the child, both past and present, which pertain to the child's problems and/or to the possible alleviation of those problems.

1.12
Special Education:

shall be defined as those instructional and resource programs and related services, unique materials, physical plant adjustments, and other special educational facilities described or implied in Article XIV in The School Code of Illinois which, to meet the unique needs of exceptional children, modify, supplement, support, or are in the place of the standard educational program of the public schools. The term includes speech pathology and vocational education.

1.13
Special Education Placement:

shall be defined as the provision of specified public special education services, including and limited to a special education instructional program, resource program, special education related services, speech and language services, homebound services, hospital services, referral to a nonpublic program or a state-operated facility.

1.14
Special School:

shall be defined as an educational setting which is established by the local school district exclusively to meet the needs of exceptional children.
1.15
Special Transportation:

shall be defined as those transportation services which are required because of the child's exceptional characteristics or the location of the special education program, or related services, and which are in addition to the regular transportation services provided by the local school district.

1.16
Standard Education Program:

shall be defined as the educational program generally offered by the local school district to the majority of its students.

1.16a
Staff Conference

See Article 1.05a, Multidisciplinary Conference, for definition of staff conference.

1.17
Surrogate Parent:

a person who acts in the educational behalf of an exceptional child, in accordance with Article XI of these regulations.

RESPONSIBILITY FOR SPECIAL EDUCATION

ARTICLE II

2.01
The local school district shall be responsible for providing and maintaining appropriate and effective education programs, at no cost to the child's parents, for all exceptional children who are resident therein.

2.02
Each local school district, independently or in cooperation with other districts, shall provide a comprehensive program of special education for those exceptional children who are between the ages of three and twenty-one and who are resident in the district. Additionally, each local school district shall have a goal of providing full educational opportunity to all handicapped children birth to age three. A comprehensive program shall include:

1. A viable organizational and financial structure.
2. Systematic procedures for identifying and evaluating the need for special education and related services.
3. A continuum of program options which incorporate appropriate instructional programs, resource programs, and related services.
4. Qualified personnel, consistent with Article XII of these regulations, who can provide:
a. Administration of the program  
b. Supervisory services  
c. Instructional programs  
d. Related services  
e. Transportation services  
f. Resource programs  

5. Appropriate and adequate facilities, equipment and materials.  

6. Functional relationships with those public and private agencies which can supplement or enhance the special education programs of the public schools.  

7. Interaction with parents, and with other concerned persons, which facilitates the educational development of exceptional children.  

8. Procedures for internal evaluation of the special education programs and services.  

9. Continuous planning for program growth and improvement based on internal and external evaluation.  

2.03 Special education shall be established and conducted as an integral part of the local district educational effort.  

1. The local school district shall be considered the primary agent for the delivery of special education services to exceptional children.  

2. An organizational unit developed by joint agreement between districts shall be considered a service agent of the participating districts.  

3. The cooperative programs shall be directed by, and responsible to, all participating local districts.  

2.04 The local school district shall be responsible for ensuring that those children who require special education services enjoy rights and privileges equal to those of all other children.  

1. No exceptional child between the ages of three and twenty-one may be permanently excluded from the public schools, either by direct action by the board of education, by indication of the district's inability to provide an educational program, or by informal agreement between parents and the school district to allow the child to remain without an educational program.  

2. A child who has been determined eligible for a special education instructional or resource program or related service shall not be expelled for behavior or a condition which is, or results from, an exceptional characteristic as defined in Illinois Revised Statutes, 1973, Chapter 122, Section 14-1.01 through Section 14-1.07 and these rules and regulations.
a. Nothing in these rules and regulations shall be construed to pro-
hibit the suspension of any child, pending special education place-
ment, as herein provided, when such suspension is warranted due to
the physical danger to the student, other students, faculty, or
school property caused by the child's presence.

b. If a child has been suspended due to the physical danger to himself
or herself, other students, faculty, or school property caused by
the child's continued presence, the local school district shall be
responsible for developing and providing an appropriate educational
program during the period preceding special education placement.

THE ESTABLISHMENT AND ADMINISTRATION OF SPECIAL EDUCATION

ARTICLE III

3.01 Each local school district shall establish and maintain special education
instructional programs, resource programs, and related services which meet the
educational needs of children with the following exceptional characteristics:

a. Auditory, visual, physical, or health impairment.
b. Speech or language impairment.
c. Deficits in the essential learning processes of perception, con-
ceptualization, memory, attention, or motor control.
d. Deficits in intellectual development and mental capacity.
e. Educational maladjustment related to social or cultural circum-
stances.
f. Affective disorders or adaptive behavior which restricts effective
functioning.

3.02 Special education instructional programs, resource programs, and related
services shall range along a continuum based on the nature and degree of the
intervention. This continuum of program options shall include, but not be
limited to:

1. Standard Program with Modification--The child receives his/her basic
educational experience through the standard program. However, these
experiences are modified through:

a. Additional or specialized education from the teacher
b. Consultation to and with the teacher
c. Provision of special equipment and materials
d. Modification in the instructional program (e.g., multi-age place-
ment, expectations, grading, etc.)

2. Alternate Standard Program--The child receives his or her basic educa-
tional experiences in a standard program whose curricular content and
educational methodology have been substantially changed. Such changes
shall occur when the special education needs of a proportionately large,
identifiable segment of the school population are not otherwise being
met.
3. Standard or Alternate Standard Program with Resource Programs or Related Services--The child receives his or her basic educational experiences through the standard, or alternate standard, program. However, these experiences are augmented by one or more resource programs or related services.

4. Special Program--The child receives most of his or her basic educational experience through an instructional program in a special class, which is largely self-contained, or in a special school.
   a. Inclusion in those parts of the standard program which are appropriate.
   b. Provision of related services as needed.

5. Cooperative Program--The child receives most of his or her educational experiences through either the standard or the special program of the public school. However, this is supplemented through work-experience programs or shared agency involvement.

6. Home and Hospital Program--The child who is eligible for either standard or the special program, but who is unable to attend such programs, receives instructional or resource programs or related services in his or her home or in the hospital.

7. State-Operated or Private Program--The child whose exceptional characteristics are so profound or complex that no special education program offered by the public schools can adequately or appropriately meet his or her needs is referred to either a state-operated or a private facility.

3.03 Special education instructional programs, resource programs, and related services, including diagnostic services, shall be available to exceptional children who are between the ages of three and twenty-one and who are enrolled in the local school district.

1. When an exceptional child becomes three years old, the child shall be eligible for special education services, including private placement if required, at any time thereafter.

2. An exceptional child who requires continued public school educational experience to facilitate his or her integration into society shall be considered eligible for such services until age twenty-one or upon successful completion of the secondary program. The child who becomes twenty-one during the school year shall be allowed to complete that year.

3. An exceptional child who has satisfactorily completed a secondary program and has been assisted in locating further educational and vocational experience as necessary shall be granted a diploma. Both parents and the student shall be made aware that eligibility for the public school special education services is terminated following the granting of a diploma and that the parents may request a review of the recommendation for graduation.
3.04 Each local school district shall ensure that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

3.05 Facilities used for special education programs and services shall be appropriate to, and adequate for, the specific program or service. Such facilities shall be at least equal to those provided to the students in the standard program.

3.06 Written policies shall be developed by the local school district concerning the method by which information concerning a student will be collected, the confidential nature of that information, the use to which it will be put, recorded and maintained, the period for which it will be maintained, the persons to whom it will be available and under what circumstances. All such policies shall be consistent with: 1) The Illinois School Student Records Act; 2) Rules and Regulations to Govern School Student Records; and 3) SBE-1, The Illinois Program for Evaluation, Supervision, and Recognition of Schools.

3.07 The establishment and operation of all special education programs and services shall be under the coordination and educational direction of a state-approved director of special education. Such director refers to an individual functioning in that capacity whose credentials have been approved by the State Board of Education.

3.08 All special education programs and services shall be provided with state-approved supervisory services, specific to the nature of the program or service. Supervisory personnel shall provide consultation to and coordination of special education programs and services.

3.09 Within each local school or district, the building principal or other designated local district administrator shall, in cooperation with special education administrative and supervisory personnel, facilitate the functioning of special education instructional and resource programs and related services as an integral part of the school program.
3.10
The specific responsibilities of special education administrative and supervisory personnel and local district administrative personnel in relation to special education instructional and resource programs and related services shall be delineated in writing and made known to all persons involved.

3.11
Special education programs and services which would not comply with these Rules and Regulations to Govern the Administration and Operation of Special Education shall require written approval from the Illinois Office of Education prior to the implementation of the program or service. Factors to be taken into consideration shall include but are not limited to: student exceptional characteristics, class size, staff qualifications, physical plant and evaluation plan.

SPECIAL EDUCATION INSTRUCTIONAL PROGRAMS AND RESOURCE PROGRAMS

ARTICLE IV

4.01
Special education instructional programs shall be designated in direct response to the educational needs of exceptional children.

1. Specific types of instructional programs may be formulated according to common exceptional characteristics of the students, or, for students with differing exceptional characteristics:
   a. Instructional programs formulated according to common exceptional characteristics of the students shall be in accord with those characteristics described in rule 9.16
   b. Instructional programs which group students with differing exceptional characteristics shall be formulated only under when the following circumstances:
      (1) The students are grouped in relation to a common educational need, or
      (2) The program can be completely individualized, and
      (3) The teacher is qualified to plan and provide an appropriate educational program for each student in the group.

2. Student-based objectives shall be developed for each type of special education instructional program.

3. The objectives of the program shall have direct and observable relationship to the objectives which have been established for each child who is placed in that program.

4.02
A curriculum of educational experiences adaptable to individual needs, interests, or abilities of each child shall be developed for each type of instructional program.
1. This curriculum shall be:
   a. Sequential
   b. Developmental
   c. Goal-directed
   d. Clearly stated and available to the public
   e. Subject to continuing evaluation and revision.

4.03 In the formation of special education instructional programs, consideration shall be given to the chronological age, mental age, physical size, motor ability, level of achievement, and social and emotional adjustment of the students.

1. Special education age groupings shall be early childhood (generally ages 3-5), primary (generally ages 6-8), intermediate (generally ages 9-11), junior high (generally ages 12-14), and secondary (generally ages 15-21).

2. The age range of students within a special program or in any individual instructional grouping shall not exceed four (4) years.

4.04 The principle determinants of the number of students served in each special education instructional program shall be the age of the students, the nature and severity of their exceptional characteristics, and the degree of intervention necessary. All exceptions to the following program size limitations shall require the written approval of the Illinois Office of Education prior to the implementation of the program.

1. Early childhood instructional programs shall have a maximum ratio of one (1) qualified teacher to five (5) students in attendance at any one given time; total enrollment shall be limited according to the needs of the students for individualized programming.

2. Instructional programs which primarily serve children whose exceptional characteristics are either profound in degree or multiple in nature shall have a maximum enrollment of five (5) students.

3. Instructional programs which primarily serve children whose principle exceptional characteristics are severe visual, auditory, physical, speech or language impairments, or behavioral disorders shall have a maximum enrollment of eight (8) students.

4. Instructional programs which primarily serve children whose principle exceptional characteristics are learning disabilities or severe mental impairment; programs which are primarily diagnostic or developmental or programs which serve children with differing exceptional characteristics shall have a maximum enrollment of ten (10) students.

5. Instructional programs which primarily serve children whose principle exceptional characteristics are moderate visual or auditory impairment shall have a maximum enrollment of twelve (12) students.
6. Instructional programs which primarily serve children whose principal exceptional characteristics are educational handicaps or mild/moderate mental impairment shall have a maximum enrollment of twelve (12) students at the primary level and fifteen (15) students at the intermediate, junior high, and secondary levels.

7. The local school district may increase the enrollment in a special education instructional program by a maximum of two (2) additional students to meet unique circumstances which occur during the school year. Such additions may be made only when the educational needs of all students who would be enrolled in the expanded program can be adequately and appropriately met, OR, the school district may increase the enrollment in a special education instructional program by a maximum of five (5) additional students when the program is provided with a full-time, non-certified assistant.

8. When the district wishes to exceed the maximum enrollments indicated above, approval shall be requested in writing to the Illinois Office of Education, Department of Specialized Educational Services. The request shall include a rationale for the proposed enrollment variation and a plan for its evaluation. If the request for an enrollment deviation is denied, the district may appeal the decision to the State Superintendent of Education.

4.05 Integration into a standard program of a student enrolled in a special education instructional program shall be determined in relation to the individual objectives established for the student. When a student is integrated into a standard educational program from a special program, the special teacher of that student shall be responsible for intensive coordination with the standard program teacher.

4.06 Special education resource programs shall be designed in direct response to the educational needs of exceptional children.

1. Resource programs shall be provided to exceptional children whose educational needs can be adequately met through part-time instruction by a special education teacher. Part-time instruction shall be considered as less than 50% of the school day. Such instruction may be delivered in resource room classes or on an itinerant basis.

a. Such programs shall include consultation with the standard program teacher and provision of special materials and equipment.

b. Enrollment in such a program shall be limited to the number of students who can effectively and appropriately receive assistance, ordinarily not to exceed a total of twenty (20). The teacher of each resource program shall actively participate in determining the appropriate enrollment.

c. Resource programs which group children with differing exceptional characteristics shall be formulated under the following circumstances.
(1) The students are grouped in relation to a common educational need, or
(2) The program can be completely individualized, and
(3) The teacher is qualified to plan and provide an appropriate educational program for each student in the group.

SPECIAL EDUCATION RELATED SERVICES

ARTICLE V

5.01 Related services which shall be provided by the school district are: those activities supplemental to the standard educational program, special education instructional programs, or resource programs which serve to facilitate the child's development. The activities include evaluation, therapeutic or consultation services.

The related services to be provided are:

1. Speech and language services for all students with speech and/or language impairments which interfere with their educational or social development.
   a. Speech and language services may be made available as:
      (1) A special education related service
      (2) A special education resource program
      (3) A special education instructional program
   b. Speech and language services shall include, but not be limited to:
      (1) Planning and developing the clinical program
      (2) Therapy for children with impairments of oral language comprehension, production, or usage, including disorders of fluency, phonation, resonance, articulation, and oral language information
      (3) Parent counseling
      (4) Referrals and follow-up
      (5) Consultative and resource services to other professional personnel.
   c. The number of children seen by a speech and language clinician shall be based on the nature of the speech and language needs of the individual children. At no time shall the case load exceed eighty (80) students.

2. School psychological services to and on behalf of students who require psychological evaluation and assistance in their educational or behavioral adjustment.
   a. School psychological services shall include, but not be limited to:
(1) Screening of school enrollments to identify children who should be referred for individual study.
(2) Individual psychological examination and interpretation of those findings and recommendations which will lead to meaningful educational experiences for the child.
(3) Counseling and performing psychological remedial measures as appropriate to the needs of students, individually or in groups.
(4) Participating in parent education and the development of parent understanding.
(5) Consulting with teachers and other school personnel in relation to behavior management and learning problems.
(6) Consulting in program development.

b. School psychological services shall be available, in an appropriate quantity, to all children for whom the district is responsible.

c. School psychological services shall be utilized to assist in the process of developing an educational climate conducive to the optimum development of all children. Emphasis shall be placed on prevention as well as rehabilitation, or indirect as well as direct services.

3. School social work services to and on behalf of students whose educational or behavioral development is restricted due to social or emotional considerations, family circumstances, or problems of the environment.

a. School social work services shall include, but no be limited to:

(1) Services to school personnel on behalf of children
   The school social worker shall provide consultation and in-service training experiences to school personnel.
(2) Identification of children in need of services
   The school social worker shall be responsible for providing the social developmental study in a case study evaluation and for participating in the identification of those children who require social work intervention.
(3) Direct services to children
(4) Service to parents on behalf of children
   The school social worker shall be responsible for serving as a liaison between the home and the school and for providing parental education and counseling as appropriate in relation to the child's problem.
(5) Utilization of community resources
   The school social worker shall facilitate the effective utilization of existing community resources to meet the needs of school children and shall assist in developing services which are needed but unavailable.

b. School social work services shall be available, in an appropriate quantity, to all children for whom the district is responsible.

c. School social work services shall be utilized to assist in the process of developing an educational climate conducive to the optimum development of all children. Emphasis shall be placed on prevention as well as rehabilitation, on indirect as well as direct services.
4. Special reader services, brailleists, typists, and interpreters shall be provided as required by the child's IEP.

5. Therapy services shall be provided for exceptional children whose educationally related, therapeutic needs have been determined in a multidisciplinary conference.
   a. Physical and/or occupational therapy shall be provided for exceptional students whose physical impairments require appropriate therapeutic attention if the students are to receive full benefit from the instructional program provided them. Such therapy shall be provided to individual children in accord with the recommendation and prescription of a licensed medical examiner.
   b. Other therapeutic services shall be provided as required to facilitate the education of exceptional children.

6. Consultant services shall be provided as required by the IEP, developed in accordance with Article 9.18a.
   a. Psychiatric consultation or other professional consultation which provides a therapeutic component shall be provided to those special education instructional programs or resource programs which serve children who exhibit affective or behavioral disorders.
   b. Other consultative services shall be provided as required to facilitate the education of exceptional children and as approved by the Illinois Office of Education.

5.02 Other related services including school health services, counseling services and parent counseling or training shall be provided by the local district when the multidisciplinary conference determines that such services would facilitate the educational development of exceptional children.

5.03 Student-based objectives shall be determined for each special education related service.

5.04 Specific objectives shall be established for each child who receives special education related services.

5.05 Related services time spent with or on behalf of the student shall be sufficient to be educationally or therapeutically adequate, as determined by the evaluation of the child's needs.
PREVOCATIONAL PROGRAM

ARTICLE VI

6.01 Prevocational programs consisting of organized instructional experiences, training experiences, and resource programs shall be provided to exceptional children in accordance with their needs and as determined by the IEP.

6.02 Provision of a prevocational program to individual students shall be determined at a multidisciplinary conference.

6.03 A vocational plan indicating specific vocational objectives, the training required, service personnel required, and the length of the proposed program shall be developed for each child determined to require a prevocational program. This plan shall be developed in cooperation with the student and his or her parents, shall be adapted to the student's interests and aptitudes, and shall be incorporated into the IEP.

6.04 Community work experiences which are part of the student's vocational plan shall occur during the school day, unless this is precluded by the nature of the experience.

6.05 No student shall spend more than one-half of the established school day participating in community work experiences or in local rehabilitation facilities.

6.06 All community work experiences which are provided by the school as part of the vocational plan and for which the student receives educational credit shall be supervised by appropriate school personnel.

6.07 Prevocational programs serving exceptional students shall be coordinated with other vocational programs of the local school district, and other public, private, and state agencies or organizations.

HOME OR HOSPITAL PROGRAM

ARTICLE VII

7.01 The home or hospital program shall consist of appropriate special education and related services which are provided by the school to a child in his or her home or in a hospital.
7.02
The home and hospital program shall be provided:

1. To any child with a health or physical impairment which, in the opinion of a licensed medical examiner, will cause an absence from school for more than two consecutive weeks, and who school personnel determine can educationally benefit from such a program.

7.03
Home and/or hospital services may begin as soon as eligibility has been established and the child’s physical and mental health permit.

7.04
The amount of instructional or related service time provided through the home or hospital program shall be determined in relation to each child’s educational needs, as well as physical and mental health.

1. A child who requires a home or hospital program on a temporary basis shall be provided with instructional services sufficient to enable him or her to return to school with a minimum of difficulty. Instructional time shall not be less than five (5) hours per week in order to qualify for full reimbursement.

   a. If the attending physician for the child has certified the child should not receive as many as five (5) hours of instruction in a school week, however, reimbursement on account of that child shall be computed proportionate to the actual hours of instruction per week for that child divided by five (5).

2. A child who requires the home or hospital program for an extended time shall be provided with instructional services sufficient to appropriately advance his or her basic educational development.

3. A child whose home or hospital instruction is being provided through a home-school telephone, or other similar device, shall be provided with not less than two (2) hours per week of direct instructional services.

7.05
Instructional time shall be scheduled only on days when school is regularly in session.

7.06
When a student, for health related reasons, requires additional work to complete the preceding year’s educational program, he or she may be provided with home and hospital instructional services during the summer.

7.07
Periodic conferences shall be established between appropriate school personnel and home and hospital personnel and parents to coordinate the courses of study and to facilitate the student’s return to school.

7.08
The school district shall not utilize the home and hospital program to avoid its responsibilities to establish in-school programs nor to eliminate children from the school program.
STATE OPERATED OR PRIVATE PROGRAMS

ARTICLE VIII

8.01 If a child exhibits exceptional characteristics which are determined in a multidisciplinary conference to be so profound, complex, or otherwise unique that no special education program offered by the public schools can adequately or appropriately meet his or her needs, the student shall be referred for placement in either a state-operated or a private facility.

8.02 The availability of community resources as an extension of the public school education program in no way relieves the local district of its responsibility to provide a comprehensive program of special education nor of its responsibility to the individual student.

8.03 When a multidisciplinary conference determines that a child cannot be provided with an education in the public schools, appropriate school personnel shall meet with the parents of the child, and representatives of the nonpublic school to develop an IEP in accordance with these rules and regulations prior to placement. If the representative cannot attend, the local school district shall use other methods to insure participation by the private school.

8.04 The district shall be responsible for locating an appropriate state-operated or private program and for facilitating the referral to that program. An appropriate program is one which will provide the child with special education experiences which are both adequate and appropriate to the student's needs.

1. With the exception of emergency psychiatric placements which include an educational component, the decision to place the child in a private facility shall precede such placement and shall be made by the local school district and the state-approved director of special education. Placements made by parents in violation of this regulation shall not be approved for reimbursement unless the multidisciplinary conference recommends and the board or state-approved director of special education, if designated, decides that an appropriate program cannot be provided within the public schools, and is sufficiently knowledgeable of the proposed private facility to be assured that the program to be provided will be appropriate to the student's needs.

2. When the multidisciplinary conference, the parents of the child, and the state-approved director of special education determines that a nondistrict residential or day educational program is indicated, the district shall consult the representatives of the appropriate state agency to determine whether a state-operated program is available and/or is appropriate to the child's needs. State-operated programs, when available, should be given first consideration; however, the district shall recommend referral of the child to the agency or facility which is most appropriate to the individual situation. Consideration shall be given to the proximity of the child's home.
3. Dual placement in a private school and a public school utilizing the provisions of Section 14-7.02 of The School Code of Illinois shall be approved only when the child is being reintegrated into the public school program or when the student over the age of 16 receives part-time prevocational training in an appropriate private program.

4. If for any reason the recommended placement cannot be achieved, the district shall provide an alternate educational plan.

8.05 When a private facility is utilized, the local district shall be responsible for payment of tuition and provision of transportation as provided by law. (See Illinois Revised Statutes, 1975, Chapter 122, Section 14-7.02).

1. All such private placements shall be approved by the Illinois Office of Education.

2. Approval of the recommended placement shall be contingent upon the following criteria:
   a. The child is enrolled in the public school
   b. The local district special education program is in compliance with Article XIV of The School Code of Illinois
   c. The facility's program is appropriate in relation to the needs of the individual child
   d. The facility is licensed by the State of Illinois or appropriate agency of the state in which the facility is located
   e. The facility is registered with the Illinois Office of Education and meets the standards established by that office
   f. The facility is within the United States
   g. The facility provides an educational program for at least 176 days per year.

3. A school district which has been denied approval for the placement of a child in a private facility cannot independently place the child and provide the tuition.

8.06 All private facility placements shall be reapproved by the Illinois Office of Education on an annual basis.

8.07 If the recommended private school placement is approved, the local district and the private facility shall enter into an agreement utilizing a format provided by the Illinois Office of Education. The agreement shall provide for, but not be limited to:

1. The child's IEP.

2. The tuition cost.

3. Periodic progress reports on the child from the private facility to be submitted at least annually.
4. Acceptance that the special education staff of the placing school district may inspect the private facility and confer with the staff at reasonable times.

5. Assurances that this placement is at no cost to parents in accordance with Section 14-7.02 of The School Code of Illinois.

8.08 The local school district shall maintain a record of supportive data on each child placed in a private facility. This data will include:

1. A summary of the child's individual problems.

2. A description of the program required by the child.

3. An explanation of why the child's needs cannot be met by the public school.

4. The description of the special education program offered by the private facility.

5. The request for placement of the child in a private facility as approved by the Illinois Office of Education.

6. Copy of the agreement with the facility.

7. Conference reports and periodic progress reports submitted by the private facility.

8. An annual reassessment of the need for continued private placement.

8.09 When a state-operated or private day program is utilized, the local district shall provide transportation for the children in this program. Other services may be provided as mutually agreed between the district and the state-operated or private facility.

8.10 The local school district shall be expected to follow the progress of those children placed in a state-operated or private program. Public school personnel shall communicate at least annually with private or state facility personnel to evaluate the child's progress and, as appropriate, facilitate the child's return to the public school program.

8.11 Transportation to a residential school shall be provided at least once, round trip, each school year.
IDENTIFICATION, EVALUATION, AND PLACEMENT OF EXCEPTIONAL CHILDREN

ARTICLE IX

9.01 Each local district shall develop and implement procedures for creating public awareness of special education programs and for advising the public of the rights of exceptional children.

1. All such procedures shall assure that information regarding special education programs and the rights of exceptional children is made available in each of the major languages represented in the district and in phrases which will be understandable to parents, regardless of ethnic or cultural background, or hearing or visual abilities.

2. Procedures developed by the district to create public awareness of special education programs and for advising the public of the rights of exceptional children shall include, but need not be limited to:

a. Annual notification to all parents in the district regarding the special education programs and services available in or through that district and of their rights to receive, upon request, a copy of these rules and regulations.

b. An annual dissemination of information to the community served by the school district regarding the special education program and services available in or through the district and the rights of exceptional children.

3. Documentation, including examples as appropriate, of the district's efforts to create public awareness of special education programs and inform parents of the rights of exceptional children shall be maintained in the district files.

9.02 Each local school district shall be responsible for actively seeking out and identifying all exceptional children in the district who are between the ages of 3 and 21. Procedures developed to fulfill this responsibility shall include but not be limited to:

1. An annual screening of children between the ages of 3 and 5, to identify those who may need special education.

2. Hearing and vision screening at regular intervals during the child's school career (see Illinois Revised Statutes, Chapter 23, Paragraphs 2331 through 2337, and Chapter 122, Section 27-8).

3. Speech and language screening of each child upon initial enrollment in a public school district in Illinois.

4. Annual screening by teachers and other professional personnel, for referral of those children who exhibit problems which interfere with their educational progress and/or their adjustment to the educational setting.
8.5 procedures may include coordination with local and state service agencies and isting parent groups.

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en a child is identified through the screening process, or exhibits problems which interfere with the child’s educational progress and/or adjustment to the ucational setting, or when there is reason to believe that a child may require special education services, the child shall be referred for a case study evaluation.

Each local school district shall develop, and make known to all concerned persons, procedures by which a case study evaluation of a child may be requested. These procedures shall:

a. Designate the steps to be taken in making a referral

b. Designate the person to whom a referral shall be made

c. Indicate the information which should be provided.

Referrals may be made by school district personnel, the parents of the child, community service agencies, persons having primary care and custody of the child, other professional persons having knowledge of the child’s problems, the child or the Illinois Office of Education.

The local school district shall be responsible for determining the appropriateness of the referral, deciding what further action should be taken, and initiating the necessary procedures.

a. To determine whether the referred child requires a formal case study evaluation, the local school district may conduct preliminary evaluative procedures such as observation of the child, assessment for instructional purposes, consultation with the teacher or the referring agent if it is someone other than a teacher, or a conference with the child.

b. When the referral has been made by a professional staff member of the local school district, by the child’s parents or by the child, the district shall be responsible for informing the person making the referral regarding its decision to conduct or not to conduct a case study evaluation. If the district decides not to conduct a case study evaluation of a child for whom such an evaluation has been requested, the information provided to the referring party shall contain, subject to the Illinois School Student Records Act and the Rules and Regulations to Govern School Student Records, the reasons for that decision.

c. If the parents of the child, other persons having primary care and custody of the child or the child initiated a referral for a case study evaluation which the district refuses or fails to conduct, the parents, other persons having primary care and custody of the child, or the child may appeal this decision in an impartial due process hearing.
d. When the district decides not to conduct a case study evaluation, the parents shall be notified, in writing, of the following:

(1) The date of the referral and the reasons the case study evaluation was requested
(2) The reasons the district has decided not to conduct a case study evaluation.

9.04

Parents or guardians of an exceptional child must be notified in writing when the local school district proposes to initiate or change the identification, evaluation or educational placement of the child or the lack of a provision of a free appropriate public education to the child.

1. The notice shall be:

a. Written in language understandable to the general public, and

b. Provided in the native language of the parent or other mode of communication used by the parents, unless it is clearly not feasible to do so.

c. If the native language or other mode of communication of the parent is not a written language, the local school district shall insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication,

(2) That the parent understands the content of the notice, and

(3) That there is written evidence on file that the requirements of these regulations have been met.

2. The notice shall contain:

a. A full explanation of all of the procedural safeguards available to the parents, including the availability upon request of a list of free or low cost legal and other relevant services available locally to assist parents in initiating an impartial due process hearing;

b. A description of the action proposed or refused by the local school district, an explanation of why that district proposes or refuses to take the action, and a description of any options that district considered and the reasons why those options were rejected;

c. A description of each evaluation procedure, test, record, or report that district uses as a basis for the proposal or refusal; and

d. A description of any other factors which are relevant to that district's proposal or refusal.
9.06 Parental consent shall be obtained before:

1. Conducting any case study evaluation or reevaluation of the child
2. Initial placement of an exceptional child in a program providing special education and related services.

9.07 If the parents object to a proposed case study evaluation by refusing to sign consent, and such objection is not resolved by a conference with the parents, the district may request an impartial due process hearing.

9.08 Before a child is given a case study evaluation, the local school district shall be responsible for determining the child's language use pattern, mode of communication, and cultural background.

1. Determination of the child's language use pattern and cultural background shall be made by determining the language(s) spoken in the child's home and the language(s) used most comfortably and frequently by the child.

2. Determination of the child's mode of communication shall be made by assessing the extent to which the child uses expressive language and the use he or she makes of other modes of communication (e.g., gestures, signing, unstructured sounds) as a substitute for expressive language.

3. The child's language use pattern, proficiency in English, mode of communication and cultural background shall be noted in the child's temporary student records.

9.09 The child shall be given a case study evaluation appropriate to the nature of the problems which caused the referral. The intensity of the evaluation procedures shall be determined by the complexity of the child's problems and the amount of information necessary to understand those problems and develop the IEP in accordance with Articles 9.13, 9.14, 9.15 and 9.18a.

1. For the child who requires special education placement at home or in a hospital because of a temporary physical or health impairment, estimated to last six months or less, a homebound services case study evaluation shall be conducted, and an IEP developed. This evaluation shall include, but need not be limited to:

   a. Evaluation of the physical or health impairment by a licensed medical physician, for diagnostic and evaluative purposes.

   b. Estimation by the physician of the time the child will require homebound services.

   c. A review of the child's current educational status and academic needs.
2. For the child whose problems seem to be limited to the area of speech or language, a speech and language case study evaluation shall be conducted and an IEP developed. This evaluation shall include, but need not be limited to:

a. A hearing screening completed at the time of the evaluation or within the previous six months.

b. A review of the child's medical history and current health status.

c. A review of the child's academic history and current educational functioning.

d. An assessment of the child's speech and language by a certified speech and language clinician.

e. An interview with the child.

The speech or language impaired child with additional handicapping conditions or educational deficits shall be referred for further evaluation.

3. For all other children, a comprehensive case study evaluation shall be conducted. This evaluation shall include, but need not be limited to:

a. An interview with the child.

b. Consultation with the child's parents.

c. A social developmental study, including an assessment of the child's adaptive behavior and cultural background.

d. A report regarding the child's medical history and current health status.

e. A vision and hearing screening, completed at the time of the evaluation or within the previous six months.

f. A review of the child's academic history and current educational functioning.

g. An educational evaluation of the child's learning processes and level of educational achievement.

h. An assessment of the child's learning environment.

i. Specialized evaluations specific to the nature of the child's problems.

(1) A psychological evaluation by a certified school psychologist, with the extent to be determined by the individual situation, shall be required:

(a) In order to place any child in a special education placement for children with mental impairment (See Illinois Revised Statutes, Chapter 122, Section 14-3.01)
(b) In order to place any child in a special education instructional program

(c) In order to place any child in a special education placement for children with behavior disorders

(d) In order to place any child where there are questions about his or her intellectual functioning and/or learning capacity.

A psychological evaluation for all other children shall be considered optional.

As appropriate, the psychologist may limit this evaluation to a review of the results of tests administered by other school district personnel and/or the results of externally administered evaluations, an analysis of the learning environment and learning processes, participation in the multidisciplinary conference and such other procedures as deemed necessary.

(2) An appropriate medical examination by a physician licensed to practice medicine in all of its branches shall be obtained, for diagnostic and evaluative purposes, for any child with either a suspected physical, health, vision or hearing impairment. This examination shall be conducted at no cost to the parent. Nothing in these regulations shall be construed to require any child to undergo any physical examinations or medical treatment whose parents or guardian object thereto on the grounds that such examinations or treatment conflicts with his or her religious beliefs.

(3) A certified speech and language clinician shall administer a comprehensive evaluation for any child suspected of having a speech or language impairment.

(4) For all children other specialized evaluations appropriate to the nature of the child's problems shall be provided at no cost to the parents.

(a) When specialized evaluation procedures not usually provided by the local school district are required to provide a better understanding of the child's educational or educationally related problems, the local school district recommending such evaluation procedures shall be responsible for assisting the parents in locating and making use of appropriate local and/or state resources

(1) Consideration shall be given to resources of state agencies or third party payors.

(2) The child may not be prohibited from receiving a special education program or service because he or she is financially or otherwise unable to obtain specialized evaluation procedures.

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(5) An audiological evaluation appropriate to the needs of the child shall be provided by an audiologist when necessary.

(6) If the parent disagrees with an evaluation obtained by the local school district, the district shall inform the parent of the opportunity to obtain an independent evaluation at public expense.

(a) In such cases, the local district may initiate an impartial due process hearing prior to such independent evaluation to demonstrate that the district's evaluation is appropriate.

(b) If the final decision is that the local district's evaluation is appropriate, the parent shall have the right to an independent evaluation, but not at public expense.

9.10
If all requirements for the case study evaluation cannot be fulfilled, due to lack of parental involvement, religious convictions of the family, or inability of the child to participate in an evaluative procedure, the district shall note the missing component(s) in the child's temporary student records and give the reason(s) it could not be provided.

9.11
Each case study evaluation shall be conducted so as to assure that it is linguistically, culturally, racially, and sexually nondiscriminatory.

1. The language(s) used to evaluate a child shall be consistent with the child's language use pattern. (See Rule 9.08) If the language use pattern involves two or more languages, the child shall be evaluated using each of the languages used by the child.

2. Psychological evaluation of a child shall be performed by a certified school psychologist who has demonstrated competencies in, and knowledge of, the language and culture of the child.

a. If documented efforts to locate and secure services from such a psychologist are unsuccessful, the district may employ a qualified psychologist who has demonstrated competencies in, and knowledge of, the language and culture of the child; this person may act as a consultant to the district's certified school psychologist performing the evaluation.

b. The district having exhausted all other alternatives and not securing the services of either a certified school psychologist or a qualified psychologist who has demonstrated competencies in, and knowledge of, the language and culture of the child, the certified school psychologist regularly employed by the district shall conduct assessment procedures which do not depend upon language, or utilize the services of an interpreter. Any special education placement resulting from such alternative procedures shall be reviewed at regular intervals until the child acquires a predominantly English
language use pattern which will assure that a psychological evaluation given by a certified school psychologist will not be discriminatory or until the need for special education is substantively verified.

3. Tests given to a child whose primary language is other than English shall be relevant, to the maximum extent possible, to his or her culture.

4. If the child's receptive and/or expressive communication skills are impaired due to hearing and/or language deficits, the district shall utilize test instruments and procedures which do not stress spoken language and one of the following:
   a. Visual communication techniques in addition to auditory techniques
   b. An interpreter to assist the evaluative personnel with language and testing.

5. Each local district shall insure that testing and evaluation materials and procedures used for evaluation and placement of exceptional children must be selected and administered so as not to be racially or culturally discriminatory.

6. Each local district shall insure that:
   a. Tests and other evaluation materials:
      (1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;
      (2) Have been validated for the specific purpose for which they are used; and
      (3) Are administered by trained personnel (e.g., certified school psychologists) in conformance with the instructions provided by their producer.
   b. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.
   c. When tests are administered to a child with impaired sensory, motor or communication skills, tests shall be selected and administered to ensure that the results accurately reflect the child's aptitude or achievement level rather than reflecting the child's impaired sensory, motor or communication skills except where those skills are the factors which the test(s) purports to measure.
   d. No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and
   e. The evaluation is made by a multidisciplinary team, including at least one teacher or other specialist with knowledge in the area of
the suspected disability. For the child suspected of having specific learning disabilities, the following additional team members must also be included: the child's regular teacher; or if the child does not have a regular teacher, a regular classroom teacher certified to teach a child of his or her age; or for a child of less than school age, an individual qualified to teach a child of his or her age.

f. The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

9.12
In those instances in which a child has been evaluated by qualified professional personnel outside the school district, that evaluation shall be considered and may be utilized in determining eligibility and need for special education placement.

9.13
Upon completion of a homebound services case study evaluation (See Rule 9.09.1) the local district superintendent or designee shall determine the child's eligibility for homebound special education placement and recommend an appropriate placement. (See Article VII) A report regarding these recommendations and all documentation upon which they were based shall be placed in the child's temporary student records.

9.14
Upon completion of a speech and language case study evaluation (See Rule 9.09.2) the speech and language clinician shall review the findings, determine the child's eligibility and need for speech and language services, and convene a conference for the purpose of developing the child's IEP as described in Article 9.18a of these regulations. Following the IEP meeting, the speech and language clinician shall make recommendations to the local district superintendent or designee for appropriate placement.

1. A speech and language impaired child exhibiting additional problems shall be referred for further evaluation.

2. A report of these findings and recommendations shall be placed in the child's temporary student records.

9.15
Upon completion of a comprehensive case study evaluation (See Rule 9.09.3) one or more conferences shall be convened for the purpose of formulating program and service options. This may or may not be the conference at which the IEP is developed. If not, an additional meeting is to be held, in accordance with Article 9.18a.

1. Participants in the conferences shall include appropriate representatives of the child's local district of residence; the special education director or designee who is qualified to provide or supervise the provision of special education; all those school personnel involved in the evaluation of the child; the parent(s); other persons having significant
information regarding the child; and those persons who may become responsible for providing the special education program or service to the child; the child, where appropriate, and other individuals at the discretion of the parent or local district.

2. The purposes of the above conference(s) shall be to:
   a. Establish a composite understanding of the child's learning characteristics, sensory and motor skills, and behaviors.
   b. Determine eligibility for special education programs and/or services.
   c. Determine the child's unique educational needs and the extent to which these needs can be met by the standard program.
   d. Determine the nature and degree of special education intervention which is needed, and recommend corresponding placement which is least restrictive of interaction with nonhandicapped children.

3. If the above conference is also used for the development of the IEP, then the components of Article 9.18a of these regulations shall be followed.

9.16
Eligibility for special education programs and services shall be determined by the presence of one or more of the following exceptional characteristics:

1. Visual impairment - The child's visual impairment is such that the child cannot develop his or her educational potential without special services and materials. (For reference, see 14-1.02 of The School Code of Illinois)

2. Hearing impairment - The child's residual hearing is not sufficient to enable him or her to understand the spoken word and to develop language, thus causing extreme deprivation in learning and communication. Or the child exhibits a hearing loss which prevents full awareness of environmental sounds and spoken language, limiting normal language acquisition and learning achievement. (For reference, see 14.1.02 of The School Code of Illinois)

3. Physical and health impairment - The child exhibits a physical or health impairment, either temporary or permanent, which interferes with his or her learning and/or which requires adaptation of the physical plant. (For reference, see 14-1.02 of The School Code of Illinois)

4. Speech and/or language impairment - The child exhibits deviations of speech and/or language processes which are outside the range of acceptable deviation within a given environment and which prevent full social or educational development. (For reference, see 14-1.06 of The School Code of Illinois)

5. Specific learning disability - The child exhibits a disorder in one or more of the basic psychological processes involved in understanding or in
using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. Such term includes conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

6. Education handicap - The child exhibits educational maladjustment related to social or cultural circumstances. (For reference, see 14-1.03 of The School Code of Illinois)

7. Behavior disorder - The child exhibits an affective disorder and/or adaptive behavior which significantly interferes with his or her learning and/or social functioning. (For reference, see 14-1.03 of The School Code of Illinois)

8. Mental impairment - The child's intellectual development, mental capacity, adaptive behavior, and academic achievement are markedly delayed. Such mental impairment may be mild/moderate, severe, or profound. (For reference, see 14-1.04 and 14-1.05 of The School Code of Illinois)

9. Multiple impairment - The child exhibits two or more impairments, severe in nature or total impact, which significantly affect his or her ability to benefit from the educational program. (For reference, see 14-1.07 or The School Code of Illinois)

9.17
Recommendations made at the multidisciplinary conference shall be determined by consensus of the participating public school personnel; if an agreement cannot be reached, additional information shall be obtained. In considering a child with mental impairment, a certified school psychologist must concur with the child's eligibility based on the results of a psychological evaluation.

1. Recommendations for special education placement shall be based on the following:

a. The child shall be placed in the educational program which is appropriate to the student's needs and least restrictive of the interaction with nonhandicapped children.

b. The special education placement must be based on the child's IEP, and located as close as possible to the child's home.

c. Unless a handicapped child's IEP requires some other arrangement, the child must be educated in the school which he or she would attend if not handicapped.

d. Consideration must be given to any potentially harmful effect on the child, on the quality of services which he or she needs, or that which impedes the education of other students in the environment.
2. The proposed placement shall be consistent with the findings of the case study evaluation and the established eligibility of the child.

9.18
A written report of the results and recommendations of the multidisciplinary conference shall be prepared.

1. The conference report shall be dated, and list the names of all those in attendance at the conference.

2. A copy of the conference report, together with all documentation upon which it is based, shall be kept on file by the local school district. The parents shall be informed of their rights to access of the report.

9.18a
If the initial multidisciplinary conference was held for the purpose of formulating a placement recommendation, an additional meeting or meetings must be held for the purpose of developing the exceptional child's IEP. Each local district must be responsible for initiating and conducting one or more meetings for the purpose of developing, reviewing and revising the IEP. The meeting at which an exceptional child's IEP is developed must be held within thirty (30) calendar days of a determination that the child needs special education and related services.

1. Parents of an exceptional child must be notified of the meeting to develop, review, and revise an exceptional child's IEP. The local school district must take steps to insure that the parents of an exceptional child are present at each meeting or are afforded the opportunity to participate, including:

   a. Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and

   b. Scheduling the meeting at a mutually agreed on time and place.

   c. The notice must indicate the purpose, time and location of the meeting, and who will be in attendance.

2. The following participants must be included in the IEP meeting:

   a. A representative of the local district, other than the child's teacher, who is qualified to provide, or supervise the provision of special education (e.g., the state-approved special education director or designee).

   b. The child's teacher. Teacher organization representatives may not attend without parental and district consent.

   c. One or both of the child's parents or guardians.

   (1) If neither parent can attend, the local district shall use other methods to insure parent participation, including individual or conference telephone calls.
(2) A meeting may be conducted without a parent in attendance if the local district is unable to convince the parents that they should attend. In this case the local district must have a record of its attempts to arrange a mutually agreed on time and place such as:

(a) Detailed records of telephone calls made or attempted and the results of those calls.

(b) Copies of correspondence sent to the parents and any responses received, and

(c) Detailed records of visits made at the parent's home or place of employment and the results of those visits.

d. The child, where appropriate.

e. Other individuals at the discretion of the parent or local district.

3. For an exceptional child who has been evaluated for the first time, the local district shall insure that a member of the evaluation team participates in the meeting or that the representative of the local district, the child's teacher, or some other person who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation, participates in the meeting, as well as an interpreter for the deaf if necessary.

4. The IEP shall include, but is not limited to, the following:

a. A statement of the child's present levels of educational performance;

b. A statement of annual goals, including short-term instructional objectives;

c. A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;

d. The projected dates for initiation of services and the anticipated duration of the services; and

e. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

5. The local district shall give the parent, on request, a copy of the exceptional child's IEP.

6. Following the determination of the child's IEP, parents shall be afforded, on an ongoing basis, reasonable opportunity for comment on and input into their child's educational program.
The local school board has the authority to place students in special education programs. The board may also authorize, by regulation, that the director of special education place students in special education programs. (See Illinois Revised Statutes, Chapter 122, Section 10-22.41)

The case study evaluation and multidisciplinary conference shall be completed within sixty (60) school days of the date of referral or the date of application for admittance to the public school by the parents of the child. (See Illinois Revised Statutes, Chapter 122, Section 14-8.01)

At least ten (10) calendar days prior to the actual placement of the child, the parents shall be notified, in writing, of the following:

1. The results of the case study evaluation.
2. The nature of the special education program or service needed by the child.
3. The recommendations for placement and the plan for implementing those recommendations.
4. Their right to object to the proposed placement and the specific procedures in making such an objection, including the procedures for requesting an impartial due process hearing.

Record of such notice shall be entered in the child's temporary student record.

If the parents consent to the proposed placement and waive the ten (10) calendar day interval before placement, the child shall be placed in the recommended program as soon as practicable.

If the parents object to the proposed placement within ten (10) calendar days of their receipt of notification of the proposed placement, they shall contact the local district, indicating their objection. The district shall then arrange a conference with the parents in an attempt to resolve the disagreement on placement. If the parents continue to object, they may appeal the proposed placement by requesting an impartial due process hearing. That request shall be made in writing to the superintendent of the local school district.

1. Receipt of a request for an impartial due process hearing shall cause the district to postpone its proposed placement of the child until the matter is resolved.

2. The child shall remain in his or her current educational placement, unless a mutual agreement is reached between the parents and local school district, until the placement issue is resolved.
3. If the child is receiving no educational service and the parents are seeking initial placement in a public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

9.24
Special education placement shall be made as soon as possible after the determination of eligibility and need for such placement but in no case shall placement occur later than the beginning of the next school semester. (See Illinois Revised Statutes, Chapter 122, Section 14-8.01)

1. When special education placement is not possible prior to the next school semester, the local school district shall be responsible for providing interim services between placement determination and actual placement which are as appropriate to the child's needs as possible.

2. The local school district shall provide written notification to the parents of the child and the State Superintendent of Education regarding the nature of the services the child will receive in the interim. Written verification of the provision of these services shall be kept in the child's temporary student record.

9.25
In addition to initial placement conferences and/or IEP meetings, the educational status and continued special education placement of each child shall be reviewed at least annually in a conference attended by those professional persons working with the student, the parents, the child where appropriate, the special education director or designee who is qualified to supervise the provision of special education, and other individuals at the discretion of the parent or local district.

1. Utilizing appropriate evaluation information, including teacher and parent opinions, the annual review shall determine the extent to which the child has met the objectives and goals as specified in the child's IEP and recommend further evaluation or revise the child's IEP.

2. When further evaluation is indicated, pursuant to the annual review, a review of the child's status as requested by the teachers, parents, other knowledgeable persons, or as a result of an impartial due process hearing, such an evaluation shall be completed within sixty (60) school days of the request.

3. A reevaluation of the child shall be conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

9.26
Notification to parents regarding continuation, change, reevaluation, or termination of placement shall inform the parents of their right to object and of the procedures to be followed to make such an objection.
9.27
Written notification regarding the continuation of the child's special education placement shall be provided to the parents of the child as soon as possible but not later than ten (10) calendar days prior to the beginning of each school year.

9.28
At least ten (10) calendar days prior to any major change in the educational placement of an exceptional child (excluding changes in levels, i.e., primary to intermediate), including those stated in rule 9.26, the parents shall be given written notification of the proposed change, including the reasons for the change and a description of the proposed program.

1. If the parents request an impartial due process hearing regarding a proposed change in the educational placement of their child, the district shall not change the placement until the matter is resolved.

2. If the parents agree to the proposed placement, then a meeting shall be held for the revision of the child's IEP.

9.29
Special education placement may be terminated only after a conference has been held, to which the child's parents have been afforded a reasonable opportunity to attend and participate. A complete review of the child's educational status shall be conducted at that conference, determining that such placement is no longer required, and that termination of the placement is in the best interests of the child, or that the child was inappropriately placed.

1. When the district decides to terminate a special education placement, the parents shall be notified at least ten (10) calendar days prior to such termination.

2. If the parents request termination of special education placement, the district shall review the child's educational status to determine whether the requested termination is in the best interests of the child. If, pursuant to this review, a continuation of the placement is recommended by the district, the parents may request an impartial due process hearing.

3. When the child's special education placement is terminated, a specific plan of transition, to include any provision of necessary related services and periodic followup, shall be developed and implemented.

IMPARTIAL DUE PROCESS HEARING

ARTICLE X

10.01
After informal procedures consistent with these rules and regulations have been exhausted, and there remain differences between the local school district and the parents or other persons having primary care and custody of the child, or the child, an impartial due process hearing may be requested.
1. A hearing may be requested by the parents, other persons having primary care and custody of the child, the child or the district regarding, but not limited to, the following:

a. Objection to signing consent for a proposed case study evaluation or initial placement.

b. Failure of the local school district, upon request of the parents, other persons having primary care and custody of the child, the child, or the Illinois Office of Education, to provide a case study evaluation.

c. Failure of a local school district to consider evaluations completed by qualified professional personnel outside the school district.

d. Objection to a proposed special education placement, either an initial placement, a continuation of a previous placement, or a major change in the placement.

e. Termination of a special education placement.

f. Failure of the local school district to provide a special education placement consistent with the finding of the case study evaluation and the recommendations of the multidisciplinary conference.

g. Failure of the local school district to provide the least restrictive special education placement appropriate to the child's needs.

h. Provision of special education instructional or resource programs, or related services in an amount insufficient to meet the child's needs.

i. A suspension totalling individually or in aggregate ten (10) or more school days in a given school year of a child who is in a special education instructional or resource program or who receives special education related services.

j. A suspension totalling individually or in aggregate ten (10) or more school days in a given school year of a child who is eligible for a special education instructional program or resource service but who has not been placed in such a program or provided such a service.

k. Reasonable belief by the parents, other persons having primary care and custody of the child, or the child, that the child's suspension or expulsion resulted from behavior or a condition symptomatic of an exceptional characteristic as defined in the Illinois Revised Statutes, Chapter 122, Sections 14-1.02 through 14-1.07.

l. Recommendation for the graduation of an exceptional child.

m. Failure of the local school district to comply with any of these rules and regulations and/or The School Code of Illinois.
10.02
The local school district shall be responsible for informing parents in writing of their right to a hearing and of the procedures to follow to make a request for such a hearing. The director of special education shall assist the parents in taking whatever action is necessary to utilize the hearing process. The local school district shall inform the parent of any free or low cost legal and other relevant services available in the area if the parent requests the information or if the parent or local school district initiates a hearing.

10.03
A request for a hearing shall be made, in writing, to the superintendent of the local school district in which the child is a resident. Such a request shall contain the reasons the hearing is being requested and all other information pertinent to the request.

1. A request for a hearing or an appeal to the Illinois Office of Education may be made at any time significant different circumstances prevail; otherwise, a hearing may not be requested nor an appeal made more than once each calendar year.

2. Such a request shall be made in writing, within ten (10) calendar days of the parents' receipt of the written notification regarding the proposed placement. If the parents have not made a request within the ten (10) day period, the parent may request a hearing at a later date in accordance with the provisions of Article 10.01 of these regulations.

10.04
Within five (5) school days of the receipt of a request for a hearing, the local school district shall:

1. Send a certified letter to the Illinois Office of Education requesting the appointment of an impartial hearing officer. This letter shall include: the name, address, and telephone number of the child and parents and of the person making the request for the hearing, if it is someone other than the child or parents; the date on which the request for the hearing was received by the local school district; the nature of the controversy to be resolved; and the primary language spoken by the parents and the child.

2. Send to the person requesting the hearing, by certified mail, a copy of the letter sent to the Illinois Office of Education.

a. If the hearing has been requested by someone other than the child's parents, the parents shall be informed of the request and invited to participate in the proceedings. Thereafter, unless the parents indicate that they do not wish to be informed and/or involved in the hearing process, all communication from the local school district, the hearing officer, and the Illinois Office of Education shall be directed to both the person requesting the hearing and the parents.
b. All references to parents made in the remainder of this Article shall be understood to include both the parents and the person requesting the hearing.

10.05
If the district decides not to honor the request for a hearing, the parents or guardian of the student shall be notified of this denial. Such notification shall be made in writing within five (5) calendar days of the receipt of the request and shall contain the reasons for the denial.

1. If the local district fails to notify the parents of their right to a hearing, as prescribed in these rules and regulations, or if the request for a hearing is denied either directly or by failure to provide such a hearing, the parent may appeal such a denial directly to the Illinois Office of Education.

2. In the event of a direct appeal to the Illinois Office of Education, the State Superintendent of Education shall order that a hearing be conducted at the local level, or order the district to perform such other measures as deemed necessary.

10.06
Within five (5) calendar days of its receipt of the request from the local school district, the Illinois Office of Education shall provide a list of five (5) prospective trained impartial hearing officers, one of which shall be selected as the impartial hearing officer to conduct the local hearing. Criteria for hearing officers are as follows:

1. Shall not be an employee of the Illinois Office of Education, the local school district, any joint agreement or cooperative program in which the district participates, or any other agency or organization that is directly involved in the diagnosis, education or care of the student or the State Board of Education.

2. Shall not be a resident of the district involved.

3. Shall not be involved in the decisions already made about a child regarding identification, evaluation, or placement, and may not have a personal or professional interest which would conflict with his or her objectivity.

4. Shall possess knowledge, information acquired through training under the auspices of the Illinois Office of Education, and/or experiences, about the nature and needs of exceptional children. An awareness and understanding of the types and quality of programs available for exceptional children is essential.

The Illinois Office of Education will pay expenses and a per diem to the hearing officer for his or her services at the local hearing.

10.06a
Selection of one hearing officer from the list shall occur within five (5) calendar days after receipt of the list from the Illinois Office of Education and shall occur as follows:

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1. The parents shall first strike a name from the list.
2. The local school district shall next strike a name from the list.
3. Both parties shall continue striking from the list until one name remains; that person shall serve as the impartial hearing officer.
4. The local school district shall notify the Illinois Office of Education, within five (5) calendar days of receipt of the list, the name of the person to be the impartial hearing officer.
   a. This notification may be transmitted verbally to the Illinois Office of Education provided that the verbal notification is confirmed in writing, with verification by the local district and the parent/guardian, to the Illinois Office of Education within five (5) calendar days.
5. Upon receipt of the notification, the Illinois Office of Education shall appoint the hearing officer selected by the local district and the parent(s) to convene a hearing. If the selected hearing officer is unable or unwilling to accept the appointment the Illinois Office of Education shall seek from the local district and parent a mutually acceptable alternate. If the local district and parent are unable to agree to a mutually acceptable alternate, the Illinois Office of Education shall provide the local district and parent with an additional list of five prospective hearing officers. The local district and parent shall then repeat the selection process as detailed above.
6. The Illinois Office of Education shall maintain a list of those persons who serve as hearing officers, along with their qualifications.
10.06b The hearing shall not be considered adversary in nature, but shall be directed toward bringing out all facts necessary for the hearing officer to make a decision.
10.07 Within five (5) calendar days of his or her appointment, the hearing officer shall set the time and place for the hearing.
1. The hearing shall be held at a time and place reasonably convenient for both parties involved. However, it shall be scheduled not later than fifteen (15) calendar days after the appointment of the hearing officer, unless the hearing officer permits an extension of time due to extenuating circumstances, not to exceed fifteen (15) calendar days, unless both parties agree.
1a. If the local district and parent cannot agree to a reasonably convenient time and place, the hearing officer shall make such a determination and proceed to schedule the hearing.
2. The Illinois Office of Education shall inform the parent by mail no later than five (5) calendar days prior to the hearing, that:
a. They or their designated representative shall have an opportunity to inspect all school records regarding the child and to obtain copies at their own expense prior to the hearing.

b. They may request an independent evaluation of their child prior to the hearing, at their own expense. The hearing officer may consider this request an extenuating circumstance and thereby authorize an extension of time for the hearing date, not to exceed thirty (30) calendar days, unless both parties agree.

c. They may require the attendance at the hearing of any school district employee or any other person who may have information relevant to the needs and abilities of the child, the proposed programs, or the status of the child. The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the parent or school board representatives, shall issue such subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parent or school board to not more than ten (10).

d. They may bring representatives, including legal counsel, agency representatives, or others, to the hearings at their own expense. These persons shall be given an opportunity to participate in the hearing process according to procedures established by the impartial hearing officer. The local school district shall maintain, on file, a list of independent evaluation sites, legal and other relevant services available in the area, and shall provide parents with the above information, upon request.

e. The educational status of the child will not be changed, pending the completion of the due process proceedings, unless the superintendent or designee decides that such change would be warranted due to immediate physical danger to the child or other persons. In such a case, the local school district shall be responsible for developing and implementing an appropriate interim placement.

f. Any party to the hearing has the right to prohibit the introduction of any evidence which has not been disclosed to that party at least five (5) calendar days prior to the hearing.

g. Either party may request that an interpreter be made available.

10.08 Parents involved in hearings have the right to have the child who is the subject of the hearing present, and open the hearing to the public.

10.09 The hearing officer shall conduct the hearing in a fair, impartial, and orderly manner.

1. At all stages of the hearing, the hearing officer shall require that interpreters be made available by the local school district for persons who are deaf or for persons whose normally spoken language is other than English.
2. At all stages of the hearing, the hearing officer shall assure that the parents are aware of and understand their rights and responsibilities in regard to this process.

3. The hearing officer shall have the authority to require additional information or evidence where he or she deems it necessary to make a complete record. He or she may recess the hearing for a specified period in order to obtain the additional information necessary.

4. The hearing officer may order an independent evaluation at local school district expense.

10.10
At any hearing which has been requested regarding the placement of a child, the hearing officer shall seek to establish the issues, allow the introduction of evidence which is relevant to those issues, and derive conclusions therefrom. These conclusions may include, but are not limited to the following:

1. That the child has needs which require special education intervention.

2. That the evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree.

3. That the diagnostic profile of the child on which the placement recommendation was based is substantially verified.

4. That the proposed placement is directly related to the child's needs.

5. That the child's rights have been fully observed.

10.11
A hearing which has been requested regarding any other controversy shall seek to establish the issues as perceived by the prospective parties and the facts on which these issues depend.

10.11a
The local school district shall present evidence that the special education needs of the child have been appropriately identified and that the special education program and related services proposed to meet the needs of the child are adequate, appropriate and available.

10.12
The parents of the child, and the local school district or their respective representatives shall have a right to present testimony, cross-examine, and confront all witnesses at the hearing.

10.13
The rules of evidence shall not apply to the hearing process.

10.14
A record of the hearing proceedings shall be made by the local school district, either by a court reporter or by a tape recorder. The parents have a right to obtain a written or electronic verbatim record of the hearing, and to obtain written findings of fact and decisions. Additionally, the record of
the hearing shall be part of the child's temporary record, and is governed by the Illinois School Students Records Act. The cost for such record shall be shared equally by the Illinois Office of Education and the local school district.

10.15
Within ten (10) calendar days after the conclusion of the hearing, the hearing officer shall render his or her decision, by certified mail, to the district, the parents, and the Illinois Office of Education.

1. The findings of fact and decision shall be in English and in the language normally spoken by the parents if it is other than English.

2. The Illinois Office of Education shall distribute the information in a nonpersonally identifiable form to the State Advisory Council on the Education of Handicapped Children.

3. The hearing officer's decision shall be binding upon the local school board and the parent unless such decision is appealed, pursuant to Article 10.16.

10.16
Either party aggrieved by the decision of the impartial hearing officer may appeal that decision to the State Superintendent of Education. The request for appeal shall be submitted in writing to the Illinois Office of Education, Legal Department, and shall include a statement of the specific reasons upon which the appeal is predicated. It shall be postmarked within fifteen (15) calendar days of the receipt of the hearing officer's decision. A copy of the request for an appeal shall be sent also to the other party to the hearing. Upon initiating a request for appeal or upon receipt of notice of a parental request for appeal, the local district shall immediately undertake the preparation and compilation of transcripts and documents for submission to the Illinois Office of Education for its review.

1. If a tape recorder was used to record the hearing procedures, then a verbatim typewritten transcript shall be made by the district within fifteen (15) calendar days and reviewed by the parents within ten (10) calendar days. Inaccuracies shall be recorded and the transcript signed by the parents and a school district representative. If a court reporter is used, the parent need not sign the transcript.

2. The typewritten transcript and tape recording of the hearing shall be subjected to the Illinois School Students Records Act and the Rules and Regulations to Govern School Student Records.

10.17
In all appeals, the district shall send a completed appeal form provided by the Illinois Office of Education and send five (5) copies each of the typewritten transcript of the local hearing to the Illinois Office of Education, Legal Division, Springfield, Illinois. If there are disputes concerning the accuracy of the transcript of the tape recording, the district shall also send a statement of the inaccuracies and the original tape recording.
1. The district shall provide to the parents a copy of the transcript which is being sent to the Illinois Office of Education.

10.18 Pending the completion of the due process hearing, and any appeal to the Illinois Office of Education, the district shall postpone any proposed change in the child's educational placement, unless the State Superintendent of Education decides that the health and safety of the child or others would be endangered. In such a case, the local school district shall be responsible for developing an appropriate interim placement.

10.19 Upon receipt of a request for a state-level review, the State Superintendent of Education or designee shall designate a trained, impartial hearing panel, composed of appropriate attorneys and educational employees of the Illinois Office of Education. The State Superintendent of Education or designee may issue subpoenas requiring the attendance of witnesses at the state-level review.

10.20 The impartial reviewing panel shall consider the appeal based upon a study of the entire hearing record. It is at the discretion of the reviewing panel whether to afford the parties an opportunity for additional testimony. If additional testimony is allowed or additional evidence is to be considered, a hearing shall be convened and all due process rights shall be afforded the parties.

10.21 A report of the reviewing panel, including its recommendations, shall be submitted to the State Superintendent of Education, who shall decide the appeal within thirty (30) calendar days of receipt of the entire hearing record of the appeal by the Illinois Office of Education. (See Illinois Revised Statutes, Chapter 122, Section 2-3.38)

1. If a hearing is convened for the purpose of receiving additional testimony or considering additional evidence, the thirty (30) day deadline for a final decision may be extended for a specified period of time.

2. The State Superintendent of Education may dismiss any appeal he deems lacking in substance.

   a. The State Superintendent of Education may dismiss an appeal in which the parents refuse to cooperate or provide additional information requested.

   b. The decision of the State Superintendent of Education requesting further information may be enforced as specified in these regulations.

10.22 Copies of the decision of the State Superintendent of Education shall be sent by certified mail to the local school district and the parents. The decision shall be written in English and in the language normally spoken by the parents if it is other than English. The Illinois Office of Education shall transmit
these findings and decisions, after deleting any personally identifiable information, to the State Advisory Council on the Education of Handicapped Children.

10.23
The decision of the State Superintendent of Education shall be binding on all parties. (See Illinois Revised Statutes, Chapter 122, Section 2-3.38)

10.24
The local school district shall be responsible for implementing the decision of the State Superintendent of Education. All decisions of the State Superintendent of Education issued pursuant to these regulations may be enforced by denying approval of special education programs, denying personnel reimbursement, reducing school district recognition status, or by such other measures as may be appropriate.

SURROGATE PARENTS

ARTICLE XI

11.01
The concept of "surrogate parents" will be implemented by guaranteeing procedural safeguards to children who are wards of the state pursuant to the provision of the Juvenile Court Act. (See Illinois Revised Statutes, Chapter 37, Sections 701-708)

1. When a child is a ward of the state, the child's court-appointed guardian or custodian shall be notified of the following:
   a. Referral for a case study evaluation (See Rule 9.03)
   b. The time and place of the conference at which the IEP will be developed, and invited to attend and participate in that conference
   c. The proposed placement
   d. Continuation, change or termination of placement (See Rules 9.26, 9.27, and 9.28)

2. The court-appointed guardian or custodian shall be entitled to rights and privileges accorded to the natural parent of a child resident in the district, i.e., an impartial due process hearing, etc.

11.02
The local school district shall make all reasonable attempts to contact the parents of the child who has been referred. If the parent is unavailable or inaccessible and the local school district has reason to believe that a surrogate parent is needed, the request for the appointment of such a person shall be sent to the Illinois Office of Education, Legal Division, Springfield.

1. The local school district shall provide documentation of their efforts to contact the parents.

2. The local school district shall provide information on the racial, linguistic and cultural background of the child whose parents are unavailable or inaccessible.
Within five (5) calendar days of receipt of the request for the appointment of a surrogate parent, the State Superintendent of Education shall consider the request. If the State Superintendent of Education decides that a surrogate parent is required, the Illinois Office of Education shall appoint one or more persons to represent the interests of the child. Such an appointment shall be made not more than ten (10) calendar days after receipt of the district’s request.

1. A surrogate parent may be any responsible citizen other than an employee of the Illinois Office of Education, the local school district in which the child is enrolled, and agency created by joint agreement, or an agency involved in the education or care of the student.

2. The surrogate parent must meet the following criteria:
   a. All reasonable attempts shall be made to secure a surrogate parent whose racial, linguistic, and cultural background is similar to the child’s.
   b. The surrogate parent must be trained by the Illinois Office of Education.
   c. The surrogate parent has no interest that conflicts with the interests of the child he or she represents.

Pursuant to the appointment of a surrogate parent, the Illinois Office of Education shall provide written notification to the local school district specifying the name and address of the surrogate parent, the specific responsibilities to be fulfilled, and the length of time for which the appointment is valid.

The Illinois Office of Education will pay expenses to the surrogate parent for his or her services.

If the Illinois Office of Education determines that a surrogate parent is not needed, the local school district shall be notified, in writing, regarding this decision. As appropriate, this notification shall indicate the reasons for the decision and/or direct the local school district regarding further action in the matter.

If the child’s natural parent becomes available or accessible, the Illinois Office of Education shall withdraw the services of the surrogate parent specified in 11.04 above.

Any person participating in good faith as a surrogate parent on behalf of the child before school officials or a hearing officer shall have immunity from civil or criminal liability that otherwise might result by reason of such participation, except in cases of willful and wanton misconduct.
SPECIAL EDUCATION PERSONNEL

ARTICLE XII

12.01 Professional and noncertified personnel shall be employed in sufficient numbers with appropriate qualifications to deliver to each exceptional child resident in the district the special education program necessary.

12.02 Professional instructional personnel shall qualify under any one of the following circumstances:

1. Hold standard Special Illinois Teachers Certificate, Type 10, in the area of responsibility.

2. Hold standard Illinois Teachers Certificate and have met full approval outlined by the Illinois Office of Education in the Special Education Certification and Approval Requirements and Procedures.


4. In Chicago, hold a valid certificate issued by the Board of Examiners of the Chicago Public Schools which entitles the holder to teach in a specific area of responsibility.

12.03 Other certified personnel employed by the school district to provide special education services shall hold accreditation appropriate to the area of responsibility and shall be approved by the Illinois Office of Education in the Special Education Certification and Approval Requirements and Procedures.

12.04 Each director and assistant director of special education shall hold a valid administrative certificate and shall meet requirements for approval as outlined by the Illinois Office of Education in the Special Education Certification and Approval Requirements and Procedures.

12.05 Supervisory personnel shall hold a valid certificate in the area of responsibility and shall meet requirements for approval as outlined by the Illinois Office of Education in the Special Education Certification and Approval Requirements and Procedures.

12.06 The chief administrator of a special school shall hold a principal's certificate and approval in at least one area of exceptionality served by the school.

12.07 Necessary noncertified personnel employed in classes, programs, or services in all areas of special education shall be under the direct supervision of a qualified specialist.
1. All necessary noncertified personnel employed in relation to special education instructional or resource programs or related services shall be provided with inservice training experiences appropriate to the nature of their responsibilities. For noncertified personnel working in a special education instructional program or resource programs, such inservice training shall be in lieu of the requirements for noncertified personnel set by the State Teacher Certification Board.

12.08
Special education personnel shall function as members of the local building or district staff with all attendant privileges and responsibilities.

12.09
A comprehensive personnel development program shall be developed and implemented for all personnel involved with the education of exceptional children.

SPECIAL TRANSPORTATION

ARTICLE XIII

13.01
Each child who exhibits one or more exceptional characteristics as described in Article XIV of The School Code of Illinois shall be eligible for special transportation. Such transportation shall be provided as the child's exceptionalities or the program location may require.

13.02
Vehicles utilized for special transportation shall be adapted to the specific needs of the children receiving this service.

13.03
Personnel responsible for special transportation shall be given inservice experiences which will enable them to understand and appropriately relate to exceptional children.

13.03a
The provisions for transportation services and vehicle adaptation shall be included in the IEP.

13.03b
When there is a change in the student's transportation from special bus to another mode of transportation such as regular bus or walking to school, this change shall be included in the IEP.

13.04
Special transportation shall be scheduled in such a way that a child's health and ability to relate to the educational experiences provided are not adversely affected. Every effort should be made to limit the child's total travel time to not more than one (1) hour each way to and from the special education facility.
13.05
The special education student's arrival and departure times shall insure a full instructional day as provided for in the IEP.

13.06
Transportation to a residential school shall be provided as indicated in Article 8.11.

EVALUATION OF SPECIAL EDUCATION

ARTICLE XIV

14.01
The extent to which the local school district is fulfilling its responsibilities to exceptional children shall be determined by the Illinois Office of Education.

1. Official representatives of the Illinois Office of Education shall be authorized to examine all documentation, including student records, which would facilitate such determination.

14.02
Evaluation by the Illinois Office of Education shall focus on the local district's provision of special education services, on each special education cooperative organization of which it is a participant, and on community resources utilized by the district.

14.03
Evaluation of special education programs and services shall be based on all of the following elements:

1. A Special Education Services Comprehensive Plan. This plan shall describe the district's provision of special education services, its plan for program involvement, and those factors unique to the individual district or cooperative which must be considered in the evaluation. This plan shall be filed with the Illinois Office of Education and revised at least triannually.

2. Continuous Internal Evaluation. The district and the cooperative unit designated to provide special education services shall develop and implement procedures which assess the extent to which exceptional children are being adequately served and the effectiveness of each special education program and service.

3. Recognition Criteria for Special Education. These criteria shall be assessed through an indepth study conducted on site by a team representing the Department of Recognition and Supervision of the Illinois Office of Education.

4. Records must be maintained to demonstrate compliance with assurances agreed to in the applications for state and federal funds. These records will be monitored by the staff of the Illinois Office of Education, Department of Specialized Educational Services.
Written reports of the results of the evaluation conducted by the Illinois Office of Education and any subsequent recommendations or actions shall be provided to the appropriate board(s) of education. Reports of the evaluation shall be considered in the public domain.

The recognition status of the local school district shall be affected by its provision of special education services.

ARTICLE XV

17.01 The purpose of Section 14-7.03 of The School Code of Illinois shall be considered to be to assure equal access to educational opportunity for exceptional children living in residential care facilities.

17.02 For the implementation of Section 14-7.03, the following definitions shall be utilized:

Orphanage

shall be defined as any licensed residential institution, other than those directly sponsored by the State of Illinois, which cares for dependent children.

Children's Home

shall be defined as any licensed residential institution, other than those directly operated by the State of Illinois, which cares for handicapped, neglected, delinquent, and/or dependent children.

Foster Family Home

shall be defined as an individual residential unit which cares for one or more handicapped, neglected, delinquent, or dependent children who are not members of the primary family. Such a home accepts foster children for care under specific and written authority of a municipal, county, or state agency authorized to make such placement.

Other State Agencies

shall be defined as residential institutions which are directly operated and primarily funded by an agency of the State of Illinois.

State Residential Units

shall be defined as houses, housing units, or housing accommodations which are on the grounds of any welfare, penal, or educational institution which is maintained and operated by the State of Illinois on property owned by the State of Illinois.
Care

shall mean that responsibility for all or part of the life development of a child has been assumed by the designated unit through guardianship, wardship, custody, or inpatient status.

15.03
For the implementation of Section 14-7.03, the following shall be excluded:

1. Any individual residential unit which received financial support from the State of Illinois for the maintenance of the family (e.g., homes whose primary financial support is received from one or more of the public assistance programs), unless the unit qualifies as a "foster family home."

2. Any residential facility which collects service charges and other payments in lieu of taxes (e.g., low-income housing units built and maintained with public funds). However, an individual unit in such a facility would be included if it qualified as a "foster family home."

3. Any bonafide school in which children are primarily taught branches of education corresponding to those taught in public schools, grades one through twelve.

4. Any residential unit maintained by the State of Illinois as housing for students in the state-supported institutions of higher education (e.g., university dormitories).

15.04
All children who live in eligible residential care facilities and who are to receive educational services from the local school district must be enrolled in that district.

15.05
When the local school district establishes and maintains an educational program on the site of an orphanage or children's home, that program must be appropriate to the needs of the students, and must be in accordance with the least restrictive environment.

1. Handicapped children shall be provided with a special education program which is in compliance with the Rules and Regulations to Govern the Administration and Operation of Special Education.

2. Educational programs which are provided to handicapped children on the site of an orphanage or children's home and which are not in compliance with the Rules and Regulations to Govern the Administration and Operation of Special Education shall not be eligible for reimbursement under Section 14-7.03 or Section 18-3 of The School Code of Illinois.

15.06
If the local district wishes to establish and maintain a special education program on the site of an orphanage or children's home, the program must be approved by the Illinois Office of Education prior to its implementation.
15.07
When children from an orphanage, children's home, foster family home, state agency, or state residential unit attend special education classes in the public school which are maintained by the local district, or the cooperative of which it is a participant, every effort shall be made to serve these students in the least restrictive environment.

15.07a
All exceptional children specified in this article of these regulations shall have an IEP.

15.08
All special education programs and services provided by the public schools to exceptional children from orphanages, children's homes, foster family homes, other state agencies, or state residential units shall be in compliance with the Rules and Regulations to Govern the Administration and Operation of Special Education and shall be subject to evaluation by the Illinois Office of Education.

15.09
An individual child shall be eligible for special education services under Section 14-7.03 if he or she meets all of the following criteria:

1. He or she is a resident of one of the residential care facilities described in Rule 15.02.

2. He or she would not be a resident of that school district except by virtue of his or her placement in one of the residential care facilities described in Rule 15.02.

3. He or she has been declared eligible according to these Rules and Regulations to Govern the Administration and Operation of Special Education.

15.10
Children resident in a residential care facility are entitled to all privileges and services provided by that district.

15.11
Children resident in a residential care facility and enrolled in the local school district shall be subject to all rules, regulations, and policies of that district.

15.12
All communication regarding the child's special education program shall be directed to the parents and when appropriate to the administrator of the residential care facility.

15.13
Individual reimbursement shall be made under Section 14-7.03 only on those children who have been declared eligible under Rules 15.04 and 15.09.
15.14
When a special education program is maintained on the site of an orphanage or children's home and when the children in that program are highly transient, reimbursement may be approved for the cost of maintaining said program. In such instances, Rule 15.04 may be waived if the child is enrolled in another public school district in the State of Illinois. Rule 15.09.2 may also be waived under this program.

15.15
The amount of reimbursement for which a district shall be eligible under Section 14-7.03 shall be computed by determining the actual cost of maintaining the program. All special education and related services shall be provided at no cost to the parents.

1. The costs for administration and supervision shall be computed on the percentage basis that the average daily membership of children in the special classes bears to the total average daily membership of that district.

2. Costs for the use of building facilities shall not exceed 10% of the expenditures of the classes.

3. All payments authorized by law, including state or federal grants for the education of children, shall be deducted in tuition or program reimbursement.

4. Programs and services provided under the auspices of, and funded by, Public Law 89-750 shall not be considered in the computation of tuition or program reimbursement.

5. When a child from an eligible residential care facility is receiving one or more special education related services while remaining in the standard educational program, the district may claim reimbursement under Section 14-7.03 and/or Sections 18-3 and 18-4; however, the total combined reimbursement shall not exceed 100% of the costs incurred by the district for the education of that child.

6. Total reimbursement for a child who is living in an eligible residential care facility and who has been placed in an eligible nonpublic special education program shall not exceed the amount authorized under Section 14-7.02 of The School Code of Illinois.

15.16
Each district eligible for reimbursement under Section 14-7.03 shall file a preapproval application within 30 days after the initiation of the program(s). The application shall include per capita cost estimate on forms provided by the Illinois Office of Education.

15.17
In all instances, the district making claim under Section 14-7.03 shall maintain complete and accurate documentation of the expenses for which the claim is being made. The documentation shall be made available for review by the Illinois Office of Education.
APPENDIX B
approval of the Director of the Department of Corrections and, in other cases, of the State Board of Education. Transfer to another school or other facilities where particular subject matter or facilities are more suited to or are needed. An examining board of inmates or wards for education. Further, the Assistant Director of the Adult Division of the Department of Corrections or the Assistant Director of the Juvenile Division may authorize an educational furlough for an inmate of an institution of higher education, other schools, vocational or technical schools, or seminars and adult classes in subjects not available within the School District, to be financed by the inmate or ward or a grant or scholarship which may be available, or applicable thereof, including school aid funds of any kind when approved by the Board and the Director of the Department.

The Department of Corrections may extend the term of confinement of an inmate or inmate of an institution of higher education, or to return within the time prescribed to the place of confinement designated by the Department of Corrections in granting such extension or ordered to return by the custodial personnel or the educational program of the department to the Department of Corrections and punishable as provided in Section 17 of "An Act to Reorganize the State Penitentiary," approved June 30, 1933, as now or hereafter amended, as to the Adult Division inmates, and the provisions of the Juvenile Court Act shall apply to wards of the Juvenile Division.

Added by P.A. 77-1779, § 1, eff. July 1, 1972.

Chapter 122, § 135 as amended:

Chapter 122, § 135 added:

19-44-6 Educational fund—Custody—Budget—Expenditure. An educational fund shall be established wherein all money received from the Common School Fund, Federal, State and local educational fund and funds, or from foundations and corporations shall be deposited and the said educational fund shall be kept separate from general funds and shall be held by the State Treasurer as ex-officio custodian in a separate fund, and shall be used to pay the expenses of the schools and school districts of the Department of Corrections together with additional or regular appropriations to said Department for educational purposes. This shall include any and all costs including, but not limited to, teacher salaries, supplies and materials, building upkeep and costs, transportation, scholarships, academic assistance, equipment and other school supplies.

Beginning in 1972, the Board of Education shall, by November 15, adopt an annual educational fund budget for the current fiscal year, which shall be necessary to delay all non-operational expenditures and liabilities of the district to be assumed by said fund, and in such a manner as to provide a statement of each item and amount needed for each object or purpose. The budget shall contain a statement of cash on hand at the beginning of the fiscal year, an estimate of the cash expected to be received during such fiscal year from all sources, an estimate of the expenditure of such fiscal year, and a statement of the estimated cash expected to be on hand at the end of such year. Prior to the adoption of the annual educational budget, said budget shall be submitted to the Department of Corrections and the Board of Education of the Superintendent of Public Instruction for incorporation.

Added by P.A. 77-1779, § 1, eff. July 1, 1972.

19-44-5 Transfer of inmate education. In all cases where an inmate or ward is to leave the institution or facility where he or she is confined for educational purposes, vocational training, field trips or for any other reason herein stated, authority must first be granted by the Department of Corrections and the said authority shall be discretionary with the Department of Corrections. The question of whether or not the said inmate or ward group of inmates or wards shall be accompanied or not accompanied by security personnel, custodial agent or agents or only educational personnel shall be in the discretion of the Department of Corrections. All transfers must be approved by the Department of Corrections.

Added by P.A. 77-1779, § 1, eff. July 1, 1972.

ARTICLE 14. HANDICAPPED CHILDREN

14-1-1 Definitions of terms.
14-1-2 Physically handicapped children.
14-1-3 Mentally handicapped children.
14-1-4 Children with special learning disabilities.
14-1-5 Educable mentally handicapped children.
14-1-6 Speech defective children.
14-1-7 Multiply handicapped children.
14-1-8 Special educational facilities and services.
14-1-9 School psychologist.
14-1-10 Professional worker.
14-2-1 Repealed.
14-2-2 Repealed.
14-2-3 Advisory Committee.
14-2-4 Repealed.
14-2-5 Special educational facilities for handicapped children.
14-2-6 Repealed.
14-2-7 Application of article.
14-2-8 Repealed.
14-2-9 Powers and duties of school boards.
Learning Disabilities: means children between the ages of 3 and 21 years who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dys- function, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing or motor handicap, of mental retardation, emotional disturbance or environmental disadvantage.

Amended by P.A. 77-1318, § 1, eff. July 1, 1972.

11-1.03f Learning Disabilities: "Physically handicapped children" means children between the ages of 3 and 21 years who suffer from any physical disability making it impracticable or impossible for them to benefit from or participate in the normal classroom program of the public schools in the school district to which they reside and whose physical development is such that they are capable of being educated through a special class program. Added by act approved July 21, 1965. L.1965, p. 1948.

11-1.08f Learning Disabilities: "Maladjusted children" means children between the ages of 3 and 21 years who because of social or emotional problems are unable to make constructive use of their school experience and require the provisions of special services signed to promote their educational growth and development.

Amended by P.A. 80-1089, § 1, eff. Nov. 22, 1977.

11-1.09f Learning Disabilities: "Children with specific learning disabilities. "Children with Specific
122 § 14-1.08
CHAPTER 122 — SCHOOLS

The Advisory Committee shall organize with a chairman selected by the Committee members and an executive secretary. The Committee shall meet at least as often as shall be determined by the written notice but at least 4 times each calendar year. The Advisory Committee shall by July 1, 1967, complete and report to the State Board of Education a comprehensive plan whereby all handicapped children resident in the county may receive a good common school education. The Advisory Committee shall, at least four every four years thereafter, recommend to the State Board of Education such additions or modifications of their comprehensive plans. All such additions or modifications shall be forwarded to the State Board of Education by the Advisory Council with its recommendations for its approval or rejection.

The regional superintendent shall act as executive secretary of the Advisory Committee and shall furnish all clerical assistance necessary for the performance of its powers and duties.

Advisory Committees of two or more counties may, cooperatively complete and report by July 1, 1967, a regional plan whereby all handicapped children in the cooperating counties may receive a good common school education if such an approach seems desirable due to population, sparsity, geographic factors, or because of other substantial reasons, including the existence of cooperative joint agreements to serve those counties. At least every 4 years thereafter, such Advisory Committees shall recommend to the State Board of Education such additions or modifications of their regional plan.

In developing special education programs operated by the Department of Children and Family Services and the Department of Mental Health and Developmental Disabilities, special education programs operated by the Department of Children and Family Services and the Department of Mental Health and Developmental Disabilities should be given full consideration and may be utilized to the extent that such programs meet the requirements of this Act and the advice of the Advisory Committee.

The State Board of Education shall furnish professional consultant assistance to the Advisory Committees under the general direction of Education designated as executive secretary of the Advisory Council and furnish guidelines for the implementation of this Act.


14—1.08 § 14—1.09
School psychologist. "School psychologist" means a psychologist who has graduated with a master's or higher degree in psychology or educational psychology from an institution of higher learning which maintains programs of study and standards of scholarship approved by the Superintendent of Public Instruction, who has had at least one year of full-time supervised experience in the individual psychological evaluation of children of a character approved by the Superintendent of Public Instruction, and who has such additional qualifications as may be required by the Superintendent of Public Instruction, and who holds a permit from the Superintendent of Public Instruction valid for 4 years and renewable upon application and submission to the Superintendent of Public Instruction of evidence of having performed acceptable psychological work within the past 2 years.


14—1.10 § 14—1.10
Professional worker. "Professional worker" means any social worker, school counselor, psychologist, school social worker, school psychologist, school counselor, school counselor intern, special education aide, special educator, special education aide, special educator intern, special administrator intern, registered therapist, professional consultant, special administrator or supervisor giving full time to special education, and teacher of any class or program defined in this Article who meets the requirements of this Article, who has the required special training in the understandings, techniques, and special methods of instruction for children who because of their handicapping conditions are placed in any program provided for in this Article or who works in such program.


14—2.01 § 14—2.01
Advisory Committees. There shall be established in each county a Special Education Advisory Committee to consist of 7 members appointed by the regional superintendent of schools who shall hold office for 4 years. Upon expiration of the terms of the original appointees, and every 4 years thereafter, the regional superintendent shall appoint or reappoint the members of the Special Education Advisory Committee to hold office for 4 years. Vacancies shall be filled in the manner for the unexpired balance of the term.

The members appointed shall be citizens of the United States and of this State and shall be selected as far as may be practicable, on the basis of their knowledge of, or experience in, problems of the education of handicapped children.


14—3.01 § 14—3.01
Advisory Council. There is hereby created a special education advisory council on special education to consist of 7 members appointed by the Governor, who shall hold office for 4 years. No person shall be appointed to serve more than 2 consecutive terms on the Advisory Council. The terms of members serving at the time of this amending Act of 1978 are not affected by this amendatory Act. The membership shall include a handicapped adult, 2 parents of handicapped children, a consumer representative, a representative of a private provider, a teacher of the handicapped, a regional superintendent of an educational service region, a superintendent of a school district, a director of special education from a district of less than 50,000 population, a professional affiliated with an institution of higher education and a member of the general public. The Governor shall appoint one member to an initial term of 2 years, one member to an initial term of 3 years and one
Any district maintaining a recognized high school is authorized to issue certificates of graduation to handicapped pupils completing special educational programs approved by the State Board of Education. 

Amended by P.A. 80-1858, § 1, eff. Jan. 9, 1979. 

14-7.01 § 14-7.01 Children attending classes in another district. If a child, resident of one school district, because of his handicap, attends a class or school for any of such types of children in another school district, the school district in which such child resides shall provide any necessary transportation, and to pay to the school district maintaining the special educational facilities the per capita cost of educating such children. 

Such per capita cost shall be computed in the following manner. The cost of conducting and maintaining any special educational facility shall be first determined and shall include the following expenses applicable only to such educational facility under rules and regulations established by the Superintendent of Public Instruction as follows: 

(a) Salaries of teachers, professional workers, necessary non-certified workers, clerks, librarians, custodial employees, readers, and any district taxes specifically for their pension and retirement benefits. 

(b) Educational supplies and equipment including textbooks. 

(c) Administrative costs and communication. 

(d) Operation of physical plant including heat, light, water, repairs, and maintenance. 

(e) Auxiliary service, not including any transportation cost. 

(f) Depreciation of physical facilities at a rate of $2.00 per pupil. 

From such total cost thus determined there shall be deducted the State reimbursement due on account of such educational facility for the same year, not including any State reimbursement for special education transportation. Such net sum shall be divided by the average number of pupils in average daily attendance in such special educational facility for the school year in order to arrive at the per capita tuition cost. 

If the child, resident of any school district, because of his handicap, attends a class or school for any of such types of children maintained in a teacher training center supported by public funds or State institution of higher learning, the resident district shall provide any necessary transportation and shall be eligible to the transportation reimbursement provided in Section 14-13.01. 

If any resident district, through request, shall provide transportation for residents of the district who meet the requirements, other than the specified age of any of the definitions of handicap in Sections 14-102 through 14-107, who attend classes in another district, and shall make a charge for such transportation in an amount equal to the cost thereof, including a reasonable allowance for depreciation of the vehicle used, such district shall be reimbursed by the State Board of Education as herein provided. 


14-7.02 § 14-7.02 Children attending private schools, public out-of-state schools or private special education facilities. The General Assembly recognizes that some public schools or special educational facilities provide an important service in the educational system in Illinois. If because of his or her handicap the special education program or a district is unable to meet the needs of a child and the child attends a non-public school or special education facility, a public out-of-state school or a special education facility owned and operated by a county government unit that provides special educational services required by the child and is in compliance with the appropriate rules and regulations of the State Superintendent of Education, the school district in which the child is a resident shall pay the actual cost of all transportation to and from such school, including room, board and transportation costs charged the child by the non-public school or special education facility, public out-of-state school or $4,500 per year, whichever is less, and shall provide him any necessary transportation. The State Board of Education shall promulgate rules and regulations for transportation to and from a residential school. 

Transportation in aid of home to a residential school more than once each school term shall be subject to prior approval by the State Superintendent in accordance with the rules and regulations of the State Board. A school district making tuition payments pursuant to this Section is eligible for reimbursement from the State for the amount of such payments actually made in excess of the district per capita tuition charge for students not receiving special education services. Such reimbursement shall be paid in accordance with Section 14-13.01 for each school year ending June 30, to the board of each such school district, through the regional superintendent of schools, on the warrant of the State Comptroller in accordance with the payment times and procedures contained herein. 

No child shall be placed in a special education program pursuant to this Section if the tuition cost for special education and related services increases more than 10 percent over the tuition cost for the previous school year or exceeds $4,500 per year unless such costs have been approved by the Governor's Purchased Care Review Board. The Governor's Purchased Care Review Board shall consist of the following persons, or their alternates: the Director of the Children and Family Services, Mental Health and Developmental Disabilities, Public Health, Public Aid and the Bureau of the Budget; the State Superintendent of Education; and such other persons as the Governor may designate. The Review Board shall establish rules and regulations for its operations and shall establish uniform standards and criteria which it shall follow. 

The Review Board shall establish uniform definitions and criteria for accounting separately by special education, room and board and other related services costs. The Board shall also establish guidelines for the coordination of services and financial assistance provided by all State agencies to assure that no otherwise qualified handicapped child receiving services under Article 14 shall be excluded from participation in or be denied the benefits of or be subjected to discrimination under any program or activity provided by any State agency. 

The Review Board shall review the costs for special education and related services provided by non-public schools or special education facilities and shall approve or disapprove such facilities in
SCHOOLS 122 § 14-7.03

The Review Board shall seek the advice of the Advisory Council on Education of Handicapped Children on the rules and regulations to be promulgated by it relative to providing special education services.

If a child has been placed in a program in which the actual costs of tuition for special education and related services exceeding room, board and transportation costs, exceed $4,500 and such costs have been approved by the Review Board, the district shall pay such total costs which exceed $4,500. A district making such tuition payments in excess of $4,500 shall be responsible for an amount in excess of $4,500 equal to the district per capita tuition charge and shall be eligible for reimbursement from the State for the amount of such payments actually made in excess of the districts per capita tuition charge for students not receiving special education services.

A child has been placed in an approved individual program and the tuition costs including room and board costs have been approved by the Review Board, the amount of such costs shall be paid by the appropriate State agency subject to the provisions of Section 14—4.01 of this Act. Any educational or related services provided pursuant to this Section in a non-public school or special education facility or a special education facility owned and operated by a county government shall be at no cost to the parent or guardian of the child. However, current law and practices relative to contributions by parents or guardians for costs other than educational or related services are not affected by this amendatory Act of 1978.

14-7.03a § 14-7.03a Children requiring extraordinary special education services and facilities. A school district providing for a child requiring extraordinary special education services because of the nature of his handicap is eligible for reimbursement from the State for the per capita cost of educating that child in excess of the district per capita tuition charge for the prior year or $2,000, whichever is less. Per capita costs shall be actual expenditure minus State reimbursement under Section 14—13.01.

A child is deemed to require extraordinary special education services and facilities under the following conditions:

1. The school district has determined that the child requires extraordinary special education facilities.
2. The school district maintains adequate cost accounting to document the per capita cost of special education services.
3. The Superintendent of Public Instruction has reviewed the case study and staffing recommendations for each child referred and has approved the district's recommendations regarding eligibility of the child for the extraordinary special education services and facilities.

other State agencies, or State residential units, are to be given enrollment priority in the school district, then reimbursement shall be paid to eligible districts in accordance with the provisions of this Section through the regional superintendent, or the warrant of the Comptroller.

The amount of tuition for such children shall be determined by the actual cost of maintaining such classes, but costs for administration and supervision shall be computed on the percentage basis that the facility provides for membership of children in the special classes bears to the total average daily membership of the district and any costs for the use of building facilities shall exceed 10% of the expenditure for the classes, such program and costs shall be approved by the State Superintendent of Education.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14—7.03 for the 1977-78 school year but for this amendatory Act of 1977 shall not be paid unless the claim shall be made prior to January 15, 1978.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14—7.03 for the 1976-77 school year but for this amendatory Act of 1977 shall not be paid unless the claim shall be made prior to January 15, 1977.

The amount of reimbursement payment for the 1977-78 school year only is less than the prior year's reimbursement payment, such district shall be paid the amount of the difference between the payments in addition to the current reimbursement payment and such amount so paid shall be subtracted from the amount of prior year's reimbursement payment owed to the district.


14—7.03a § 14—7.03a. Combined reimbursement. A school district may claim reimbursement under both Sections 14—7.02 and Section 14—7.03 for those children served under Section 14—7.03 whose needs also require placement under Section 14—7.02.


14—8.01 § 14—8.01. Supervision of special education buildings and facilities. All special education buildings, facilities, programs, and all educational programs as approved by the State Superintendent of Education for handicapped children, children defined in Sections 14—1.02 through 14—1.07 shall be under the supervision of the State Superintendent of Education for the purpose of insuring that the programs meet standards jointly developed and agreed upon by both the Illinois State Superintendent of Education and the State Board of Education. Any State agency providing special educational programs, facilities, or buildings for handicapped children defined in Sections 14—1.02 through 14—1.07 shall promulgate rules and regulations in consultation with the State Board of Education and pursuant to the Illinois Administrative Procedure Act as now or hereafter amended. The State Board shall ensure that all such programs comply with this Section and Section 14—8.02.

No otherwise qualified handicapped child receiving special education and related services under Article 14—8 shall be denied the benefits of or be subjected to discrimination under any program or activity provided by a State agency. State agencies providing special education and related services including room and board, either
directly or through grants or purchases of services shall continue to provide these services according to current law and practice. Room and board costs are not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education. An amount equal to one-half of the State education agency's share of M-94-112 federal money, or so much thereof as may actually be needed, shall annually be appropriated to pay for the additional costs of providing for room and board for these children placed pursuant to Section 14—7 of this Act.

Special education and related services included in the child's individualized educational program which are not provided by another State agency shall be included in the special education and required by the State Board of Education and the local school district.

The State Board of Education with the advice of the subcommittee shall prescribe the standards and make the necessary rules and regulations for special education programs administered by local school boards, including but not limited to establishment of classes, training requirements of teachers and other professional personnel, eligibility and admission of pupils, the curriculum, class size limitation, building programs, housing, transportation, special equipment and instructional supplies, and the applications for claims for reimbursement. The State Board of Education shallroute special education rules and regulations for annual evaluations of the effectiveness of all special education programs and additional assistance to the local school district of the individualized educational program for each child for whom it provides special education services.


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122 § 14-8.02 Identification, evaluation and placement procedures. The State Board of Education shall make rules which local school boards shall determine the eligibility of children to receive special education. Such rules shall ensure that a free appropriate public education be available to all handicapped children as defined in Sections 14—1 through 14—1.02. For purposes of determining the eligibility of children the State Board of Education shall include in the rules definitions of "case study," "staff conference," "individualized educational program," and "qualified special education programs" to each category of handicapped children as defined in this Article.

No child shall be eligible for special education facilities except with a carefully completed case study fully reviewed by professional personnel in a staff conference and only upon the recommendation of different specialists. No child shall be eligible for admission to a special class for the education mentally handicapped or for the trainable mentally handicapped except with a psychological and educational evaluation and recommendation by a school psychologist. Present shall be determined from the parent or guardian of a child or any evaluation conducted. If consent is not given to the school district may initiate an independent due process hearing under this Section prior to such independent evaluation to demonstrate that the district's evaluation is appropriate. If the final decision is that the school district's evaluation is appropriate the parent shall have the right to an independent evaluation, but not at public expense. The determination of eligibility shall be made within 60 days of receipt of a request by the parent or guardians of the child. After a child has been determined to be eligible for a special education program, such child must be placed in the appropriate program pursuant to the individualized educational program by the end of the next school semester. The district shall indicate to the parent or guardians and the State Board of Education the nature of the services the child will receive for the regular school term while waiting placement in the appropriate special education class. To the maximum extent appropriate, the placement shall provide the child and the parent or guardian with the opportunity to be educated with children who are not handicapped. Placement in special class, separate schools or other removal of the handicapped child from the regular educational environment shall occur only when the nature of the severity of the handicap is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

No child who comes from a home in which a language other than English is the principal language used may be assigned to any class or program under this Article until he has been given, in the principal language used at home, an opportunity reasonably related to his cultural environment.

Nothing in this Article shall be construed to require any child with a language or cultural background that makes it necessary to provide an individualized educational program or medical treatment whose parent or guardian object thereto on the ground that such exarnination or treatment conflicts with his religious beliefs.

School boards or their designee shall provide to the parent or guardian of a child prior written notice of any decision (a) proposing to initiate or change, or (b) refusing to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to their child, and the reasons therefor. Such written notification shall inform the parent or guardian of the opportunity to present complaints with respect to any matter relating to the educational placement of the student, the provision of a free appropriate public education and to have an impartial due process hearing under this Section. The notice shall also inform the parent or guardian of the availability upon request of a list of free or low-cost legal and other relevant services available locally to assist parents or guardians in initiating such cases the school district may initiate an impartial due process hearing under this Section prior to such independent evaluation to demonstrate that the district's evaluation is appropriate. If the final decision is that the school district's evaluation is appropriate the parent shall have the right to an independent evaluation, but not at public expense. The determination of eligibility shall be made within 60 days of receipt of a request by the parent or guardians of the child. After a child has been determined to be eligible for a special education program, such child must be placed in the appropriate program pursuant to the individualized educational program by the end of the next school semester. The district shall indicate to the parent or guardians and the State Board of Education the nature of the services the child will receive for the regular school term while waiting placement in the appropriate special education class. To the maximum extent appropriate, the placement shall provide the child and the parent or guardian with the opportunity to be educated with children who are not handicapped. Placement in special class, separate schools or other removal of the handicapped child from the regular educational environment shall occur only when the nature of the severity of the handicap is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

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an impartial due process hearing. Any parent or guardian who is deaf, or does not normally communicate using spoken English, who participates in a meeting with a representative of a local educational agency for the purpose of developing an individualized educational program shall be entitled to the services of an interpreter.

An impartial due process hearing shall be conducted upon the request of the parent or guardian, or the local school board by an impartial hearing officer appointed as follows: If the request is made through the local school district, within 5 school days of receipt of the request, the local school district shall forward the request to the State Superintendent. Within 5 days after receiving this request for hearing, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers. No one on the list may be a resident of the school district. The board and the parents or guardian or their legal representatives within 5 days shall alternatively strike one name from the list until only one name remains. The parents or guardian shall have the right to proceed first with the striking. The per diem allowance for the hearing officer shall be established and paid by the State Board of Education. The hearing shall be closed to the public except that the parents or guardian may require that the hearing be public. The hearing officer shall not be an employee of the school district, an employee in any joint agreement or cooperative program in which the district participates, or any other agency or organization that is already involved in the diagnostic, education, or care of the student or the State Board of Education. All impartial hearing officers shall be trained in federal and state statutes and regulations regarding special education. The impartial hearing officer shall have the authority to require additional information or evidence where he or she deems it necessary to make a complete record and may order an independent evaluation of the child, the cost of which shall be paid by the local school district. Such hearing shall not be considered adversary in nature, but shall be directed toward bringing to light all relevant evidence for the impartial hearing officer to render an informed decision. The State Board of Education shall, with the advice and approval of the Advisory Council on Education of Handicapped Children, promulgate rules and regulations to establish the qualifications of the hearing officers and the rules and procedure for such hearings. The school district shall present evidence that the special education needs of the child have been appropriately identified and that the least restrictive program and related services proposed to meet the needs of the child are adequate, appropriate and available. Any party to the hearing shall have the right to be represented by counsel and be accompanied and advised by an individual with special knowledge or training with respect to the problems of handicapped children at the party's own expense. (b) present evidence and cross-examine witnesses. (c) prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing, (d) obtain a written or electronic verbatim record of the hearing, (e) obtain written findings of fact and a written decision. The student shall be allowed to attend the hearing unless the hearing officer finds that attendance is not in the child's best interest or detrimental to the child. The hearing officer shall specify in the findings the reasons for denying attendance by the student. The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the parent, guardian or school board representatives, shall issue subpoenas in the form and content provided for in the State Board of Education and the school board shall share equally the costs of such process. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parents or guardians of the school board to not more than 10. The State Board of Education and the school board shall share equally the costs of such process. The hearing officer shall render a decision and shall submit a copy of the findings and its decision to the parent or guardian and to the local school board within 10 school days after the completion of the hearing. The hearing officer's decision shall be binding upon the local school board and the parent unless such decision is appealed pursuant to the provisions of this Section.

Any party aggrieved by the decision may appeal the hearing officer's decision to the State Superintendent of Education. The State Superintendent of Education or his designee shall conduct an impartial review of the hearing and may issue subpoenas requiring the attendance of witnesses at such review. The parties to the appeal shall be afforded the opportunity to present oral arguments and additional evidence at the review. Upon completion of the review the State Superintendent of Education shall render a decision and shall provide a copy of the decision to all parties.
in the education or care of the student, or the
State Board of Education. Services of any person
assigned as an aide shall terminate if the
teacher or guardian becomes available unless other-
wise requested by the parents or guardian. The
assignment of a person as an aide at any time
supersedes, terminates, or suspends the parents' or
guardian's legal authority relative to the child.
Any person participating in good faith as an ad-
dvocate on behalf of the child before school officials
or a hearing officer shall have immunity from
civil or criminal liability that otherwise might re-
sult by reason of such participation, except in cases
of fraud and willful misconduct.
At all stages of the hearing the hearing officer
shall require that interpreters be made available
by the local school district for persons who are
deaf or for persons whose normally spoken lan-
guage is other than English.

16-9. § 14-3 Repealed by act approved July

14-9.01 § 14-9.01 Qualifications of teachers, other
professional personnel and necessary work-
ors. No person shall be employed to teach any
class or program authorized by this Article who
does not hold a valid teacher's certificate as provid-
ed by law and unless he has had such special train-
ing as the Superintendent of Public Instruction may
require. All other professional personnel employed
in any class, service, or program authorized by this
Article shall hold such certificate(s) and shall have
had such special training as the Superintendent
of Public Instruction may require. Nothing contained
in this Act prohibits the school board from employ-
ing necessary workers to assist the teacher with the
special educational facilities except that all such
necessary workers must have had such training as
the Superintendent of Public Instruction may re-
quire.

The employment of any teacher in a special edu-
cation program provided for in Sections 14-1.01 to
14-1.04, inclusive, shall be subject to the provi-
sions of Sections 14-11 to 14-16, inclusive. Any
teacher employed in a special education program in
which 2 or more districts participate shall enter
into contractual continued service in each of the
school districts subject to the provisions of
Sections 14-11 to 14-16 inclusive. Added by act

14-10. § 14-10 Repealed by act approved July

14-10.01 § 14-10.01 Apprenticeship and fellow-
ship program—Training of professional personnel.
The Superintendent of Public Instruction with the
advice of the Advisory Council may make appren-
ticeship or fellowship grants to persons of good char-
acter who are interested in working programs for
the education of handicapped children, for either
part-time or full-time study in programs designed
to qualify them under Section 14-1.10 of this Article.
Persons to qualify for a fellowship must
have earned at least 45 semester hours of college
credit and fifteen in quality for a fellowship must
be graduates of a recognized college or university.
Each fellowship and fellowship may be in
amounts of not more than $1,500 per academic year
for apprenticeships and not more than $2,500 per
academic year for fellowships except as additional,
an additional sum up to $5,500 annually for each
grantee may be allowed to any approved institu-
tion of higher learning in Illinois for the actual
cost to the institution, as certified by the insti-
tution.
Part-time students and summer session stu-
dents may be awarded grants on a pro rata basis.
All grants shall be made under rules and regula-
tions prescribed by the Superintendent of Public
Instruction and issued pursuant to this Act.
The Superintendent of Public Instruction may
contract with any accredited university or pro-
gram offering pre-college training to Illinois to offer courses required for
the professional training of special education personnel
at such times and locations as may best serve the
needs of handicapped children in Illinois and may
reimburse the institution of higher learning for any
financial loss incurred due to low enrollments, dis-
tances from campus, or other good and substantial
reason satisfactory to the Advisory Council.
The Superintendent of Public Instruction shall
administer the apprenticeship and fellowship account
and related record of each person who is attending
an institution of higher learning under a trainees-
ship or fellowship awarded pursuant to this section
and at each proper time shall certify to the Auditor
of Public Accounts or the State Comptroller, as the
case may be, the current payment to be made to the
holder of each fellowship, in accordance with an
appropriate certificate of the holder of such
fellowship by the institution of higher learning
attended by him.

Following the completion of such program of
study the recipient of such a fellowship or fellow-
ship is expected to accept employment within one
year in an approved program of special education
for handicapped children in Illinois on the basis of
the year of service for each academic year of train-
ing received through a grant under this Article.
Person who fail to comply with this provision may,
at the discretion of the Superintendent of Public
Instruction in consultation with the code of the Advisory
Council, be required to refund all or part of the trainees-
ship or fellowship monies received.

Amended by P.A. 77-1306, § 1, eff. Aug. 21, 1971.

14-11. § 14-11 Repealed by act approved July

14-11.01 § 14-11.01 Educational materials coordinat-
ing unit. There shall be established within
the Office of the Superintendent of Public
Instruction under the direction of the Superintend-
ent an educational materials coordinating unit for
handicapped children to provide:
(1) Staff and resources for the coordination, cata-
loging, standardizing, production, procurement,
storage, and distribution of educational materials
needed by visually handicapped children and
adults.

(2) Staff and resources of an instructional ma-
terials center to include library, audio-visual, pro-
gam, and other types of instructional materials
pertinent to the instruction of handi-
capped pupils.

The educational materials coordinating unit shall
have as its major purpose the improvement of in-
structional materials for handicapped children
and the in-service training of all professional personnel
associated with such instruction and
the materials available to and used by these
units is authorized to operate under rules
and regulations of the Superintendent of Public
Instruction with the advice of the Advisory Council.

§ 14-11.02

Service centers for the deaf-blind.

14-11.02 Notwithstanding any other Sections of this Article, the Illinois Office of Education shall develop and operate a service center for deaf-blind individuals. For the purposes of this Section, a "deaf-blind" individual is a person who has both auditory and visual impairments, the combination of which causes such severe communication and other developmental, educational, vocational and rehabilitation problems that such person cannot properly be accommodated in special education or vocational rehabilitation programs either for the hearing handicapped or the visually handicapped.

The Illinois Office of Education is empowered to establish, maintain and operate a permanent state-wide service center with services including, but not limited to:

1. Identification and case finding;
2. Providing families with appropriate counseling;
3. Referring deaf-blind individuals to appropriate agencies for medical and diagnostic services;
4. Referring deaf-blind individuals to appropriate agencies for educational, training and care services; and
5. Developing and expanding services to deaf-blind individuals throughout the State. This will include ancillary services, such as transportation so that the individuals can take advantage of the expanded services;
6. Having available by one year from the effective date of this amendatory Act, a temporary residential educational training facility in the Chicago metropolitan area. Such facility shall be located in an area accessible to public transportation. A permanent facility shall be constructed at a later date pursuant to the recommendations of the Advisory Board, as provided in this Section;
7. Receiving and dispersing State and Federal funds designated for services to deaf-blind individuals;
8. Coordinating services to deaf-blind individuals through all appropriate agencies including the Department of Mental Health and Developmental Disabilities and the Division of Vocational Rehabilitation; and
9. Entering into contracts with other agencies to provide services to the deaf-blind.

The center shall operate on a no-reject basis. Any deaf-blind individual under the age of 21 referred to the center for service and diagnosed as deaf-blind, as defined in this Act, shall qualify for all the available services of the center.

The requirement of the concept of no reject shall be paramount in negotiating contracts and in supporting other agencies services.

The Illinois Office of Education shall continue to carry out responsibilities required by Title VI, Part C, of the Federal Elementary and Secondary Education Act.

There is hereby created the Advisory Board for Services for Deaf-Blind Individuals which shall provide advice to the State Superintendent of Education, the Governor, and the General Assembly on all matters pertaining to policy on deaf-blind individuals, including the implementation of legislation enacted on their behalf. Within six months from the effective date of this amendatory Act, the Advisory Board shall present to the General Assembly recommendations for educational and vocational services and care for deaf-blind individuals; recommendations on the proper organizational and administrative procedures and arrangements for educational functions of the permanent residential educational training facility for deaf-blind individuals in the Chicago metropolitan area; and shall provide in said recommendations a detailed analysis of the costs of constructing and operating a permanent deaf-blind service center in the Chicago metropolitan area. The recommendations shall propose a specific site for the facility and shall detail the proposed source or sources of funds for construction of said facility.

The Advisory Board shall cooperate with the Capital Development Board in obtaining the final selection of a site for the establishment of a permanent deaf-blind service center in the Chicago metropolitan area. The Capital Development Board shall cooperate with and lend all such assistance as may be requested by the Advisory Board in the development of specifications and the selection of a site for a deaf-blind service center.

The Advisory Board shall make recommendations pertaining to but not limited to the following matters:

1. Existing and proposed programs of services for deaf-blind individuals of all State agencies;
2. The State program and financial plan for deaf-blind service in the State of Illinois, including priorities to be developed by the Illinois Office of Education;
3. Standards for services in facilities serving deaf-blind individuals; and
4. Standards and rates for State payments for any services purchased for deaf-blind individuals;
5. Services and research activities in the deaf-blind field, including evaluation of services; and
6. Planning for professional training in a State university or college.

The Advisory Board shall consist of one person appointed by the Governor, 2 persons appointed by the State Superintendent of Education, 2 persons appointed by each of the Directors of the Departments of Children and Family Services, and Mental Health and Developmental Disabilities, and 2 persons appointed by the Director of the Division of Vocational Rehabilitation. Any person designated by each agency may be an employee of such agency. The appointments of each appointing authority other than the Governor shall include at least one parent of a deaf-blind individual.

The 9 Advisory Board members initially appointed shall draw lots to determine which 3 shall serve 3-year terms, which 3 shall serve 2-year terms, and which 3 shall serve 1-year term. Vacancies in terms shall be filled by the original appointing authority. After the original terms, all terms shall be for 3 years.

The above appointments shall be made within 30 days of the effective date of this amendatory Act.

Ex officio members of the Advisory Board who are compensated for State service shall serve on a full-time basis. Members shall be reimbursed for all actual expenses incurred in the performance of their
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Each member who is not compensated for state service on a full-time basis shall be compensated at a rate of $50 per day which he spends on official business. The Advisory Board shall meet at least four times per year and not more than 12 times per year.

The Advisory Board shall provide for its own organization.

Five members of the Advisory Board shall constitute a quorum. The affirmative vote of a majority of all members of the Advisory Board shall be necessary for any action taken by the Advisory Board.

Added by P.A. 79-566, § 1, eff. Sept. 12, 1975.

14-12.01 | 14-12.01 Account of expenditure—Cost report—Reimbursement. Each school board shall keep an accurate, detailed and separate account of all monies paid out by it for the maintenance of each of the types of facilities, classes and schools authorized by this Article for the instruction and care of pupils attending them and for the cost of their transportation, and shall annually report thereon indicating the cost of each such elementary or high school pupil for the school year ending June 30.

Applications for approval for reimbursement for costs of special education must be first submitted through the office of the regional superintendent of schools of the State Superintendent of Education on or before 20 days after a special class or service is started. Applications shall set forth a plan for special education established and maintained in accordance with this Article. Such applications shall be limited to the cost of construction and maintenance of special education facilities designed and utilized to house instructional programs, diagnostic services, or other special education services for handicapped children and reimbursement as provided in Section 14-13.01. Such application shall not include the cost of construction or maintenance of any administrative facility separate from special education facilities, designed and utilized to house instructional programs, diagnostic services, or other special education services for handicapped children. Reimbursement claims for special education shall be made as follows:

Each district shall file its claim computed in accordance with rules prescribed by the State Board of Education with the regional superintendent of schools, in duplicate, on or before August 1, for reimbursement on forms prescribed by the State Superintendent of Education. Data used as a basis of reimbursement claims shall be for the school year ending June 30 preceding. The regional superintendent of schools shall check and upon approval shall forward the State Superintendent of Education with the original and one copy of the claims on or before August 15. The State Superintendent of Education before approving any such claims shall determine their accuracy and whether they are in accord with services and facilities provided under approved programs. Upon approval he shall transmit, by September 20 the State report of claims to the Comptroller showing the amounts due to each school or educational service region for their special education services for handicapped children and reimbursement claims. Beginning with the fiscal year the first 3 vouchers shall be presented by the State Superintendent of Education and transmitted to the Comptroller on the 30th day of September, December and March, respectively, and the final voucher, no later than June 30, shall show reimbursement for such purpose for any year is insufficient, it shall be apportioned on the basis of the claims approved.

Failure on the part of the school board to prepare and certify the report of claims under this Section on or before August 1 of any year, and its failure thereafter to prepare and certify such report to the regional superintendent of schools within 10 days after receipt of notice of such delinquency sent to it by the State Superintendent of Education by registered mail, shall constitute a forfeiture by the school district of its right to be reimbursed by the State under this Section.


14-13.01 | 14-13.01 Reimbursement payable by state—Amounts. Reimbursement for furnishing special educational facilities in a recognized school to the type of children defined in Sections 14-1 through 14-1.07 shall be paid in accordance with Section 14-1-2.01 for each school year ending June 30 to the school boards, through the regional superintendents of the State Comptroller out of any moneys in the treasury appropriated for such purposes on the presentation of vouchers as prescribed in this Section.

The reimbursement shall be limited to funds expended for construction and maintenance of special education facilities designed and utilized to house instructional programs, diagnostic services, or other special education services for handicapped children and reimbursement as provided in Section 14-13.01. There shall be no reimbursement for construction and maintenance of any administrative facility separate from special education facilities, designed and utilized to house instructional programs, diagnostic services, or other special education services for handicapped children.

For eligible children, reimbursement shall be made to the school in the amount of the teacher's salary, but not more than $1,000 annually per child, whichever is less. Children shall be included in any reimbursement under this paragraph only if regularly receive a minimum of one hour of instruction each school day, or in lieu thereof, a minimum of 5 hours of instruction in each school week in order to qualify for full reimbursement under this Section. If the attending physician for such a child has certified that the child should not receive more than 5 hours of instruction in a school week, however, reimbursement under this paragraph is accounted to the school for that child, who, shall be compensated proportionate to the actual hours of instruction per week for that child divided by 5. (b) For children of the type described in Section 14-1.07, the reimbursement provided for in Section 14-1.07, and of the cost of transportation for each such child, when the Superintendent of Public Instruction determined in advance requires special transportation service in order to take advantage of such educational facilities. Such transportation cost shall be limited to expenditure items other than the cost of at-
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Requiring equipment, intern and rest of facilities and shall include a reasonable allowance for depreciation to be computed in accordance with regulations to be prescribed by the Superintendent of Public Instruction. For purposes of this subsection (c), the cases for processing claims specified in Section 13—9 shall apply.

(c) For each professional worker, excluding those included in subparagraphs (a), (d), (e) and (f) of this section, the annual sum of $4,250. Districts participating in a joint agreement special education program shall not receive such reimbursement if reimbursement is made for a director of the joint agreement program.

(d) To a school psychologist as defined in Section 14—13.09 the annual sum of $4,550.

(e) For each qualified teacher working in a fully approved program for children of preschool age who are deaf or hard-of-hearing the annual sum of $4,250.

(f) For teachers, working with blind or partially seeing children 1/2 of their salary but not more than $1000 per child. Teachers may be employed to teach such children and shall not be required to be certified but prior to employment shall meet standards established by the Superintendent of Public Instruction.

(g) For necessary non-certified employees working in any class or program for children defined in this article. 1/4 of the salary paid or $2,500 annually per employee, whichever is less.

The Superintendent of Public Instruction shall prescribe the rules for determining the allocation of reimbursement under this section on less than a full time basis and for less than a school year.

When any school district eligible for reimbursement under this section operates a school or program approved by the Superintendent of Public Instruction for a number of days in excess of the official school year but not to exceed 225 school days, such reimbursement shall be increased by $5 of the amount or rate paid hereunder for each additional day such school is operated in excess of 180 days per calendar year.

Amended by P.A. 86-1496, § 33, eff Jan 1, 1979.

14—13.09 § 14—13.02 Reimbursement for special education building purposes. For school districts, including school districts which, by proper resolution, are obligated to contribute a proportionate part to a building program authorized under Section 10—12.11B, or under the "Intergovernmental Cooperation Act", as now or hereafter amended, and have levied the tax authorized by Sections 17—1—1a or 19—31 and there remains a surplus of uncommitted funds for the payment of the district's proportionate share of said building project, a 1/4, 1/3, reimbursement shall be given for each professional worker in the district.

Such reimbursement shall be paid in accordance with Section 14—13.01 for each school year ending June 30 to the school board through the county superintendent of schools, on the warrant of the State Comptroller out of any money in the treasury appropriated for such purpose, on the presentation of vouchers.

Article 14A. Gifted Children

Sec. 1. Purpose.

14A-1. Gifted children. "Gifted children" for the purpose of this and subsequent sections means children whose mental development is accelerated beyond the average to an extent they need and are profit from specially planned educational services. As amended by act approved Aug. 2, 1965, L.1965, p. 1374.

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122 §14A-6

School Code §14A-6

14A-4. Advisory Council. There is hereby created an Advisory Council on Education of Gifted Children to consist of 7 members appointed by the Superintendent of Public Instruction, who shall hold office for seven years, except that the initial appointments shall be for periods of time not to exceed seven years. After the expiration of the initial appointments, subsequent appointments shall be for the full term of seven years. Vacancies shall be filled in like manner for the unexpired balance of the term only.

The members appointed shall be citizens of the United States and of this State and shall be selected as far as may be practicable on the basis of their knowledge of or experience in problems of the education of gifted children.

The Superintendent of Public Instruction shall act as the chairman of the Council and shall set the time and place of its meetings. The Council shall meet on the call of the chairman whenever a quorum shall be present, but not less frequently than once each calendar year. The Council shall consist of all the members appointed to the Council and any member appointed to fill a vacancy shall be entitled to participate in the deliberations and to vote. The Council shall act by a majority vote of its total membership.

The Superintendents of Public Instruction to all the districts shall constitute a Board of Education of Gifted Children to consist of 7 members, appointed by the Superintendent of Public Instruction, who shall hold office for seven years, except that the initial appointments shall be for periods of time not to exceed seven years. After the expiration of the initial appointments, subsequent appointments shall be for the full term of seven years. Vacancies shall be filled in like manner for the unexpired balance of the term only.

The members appointed shall be citizens of the United States and of this State and shall be selected as far as may be practicable on the basis of their knowledge of or experience in problems of the education of gifted children.

The Superintendent of Public Instruction shall act as the chairman of the Council and shall set the time and place of its meetings. The Council shall meet on the call of the chairman whenever a quorum shall be present, but not less frequently than once each calendar year. The Council shall consist of all the members appointed to the Council and any member appointed to fill a vacancy shall be entitled to participate in the deliberations and to vote. The Council shall act by a majority vote of its total membership.

The Superintendents of Public Instruction shall act as the chairman of the Council and shall set the time and place of its meetings. The Council shall meet on the call of the chairman whenever a quorum shall be present, but not less frequently than once each calendar year. The Council shall consist of all the members appointed to the Council and any member appointed to fill a vacancy shall be entitled to participate in the deliberations and to vote. The Council shall act by a majority vote of its total membership.

In the event of any conflict of interest, the conflict shall be referred to the State Board of Education, which shall determine the matter. In the event of any conflict of interest, the conflict shall be referred to the State Board of Education, which shall determine the matter. In the event of any conflict of interest, the conflict shall be referred to the State Board of Education, which shall determine the matter.

If the amount appropriated for such reimbursement for services rendered by the Council is not sufficient to cover the cost of the services rendered, the Council may apply for additional funds from the State Board of Education. The Council shall submit a report to the State Board of Education on the services rendered and the amounts thereof, and the State Board of Education shall adopt a resolution appropriating the necessary funds. The State Board of Education shall provide for reimbursement for services rendered by the Council in accordance with the terms of this Act.

ARTICLE 14D. EDUCATIONALLY DISADVANTAGED CHILDREN

14D-1. Purpose.

The purpose of this enactment is to assist and expedite local school districts in the development and improvement of educational programs that will serve the educational needs of educationally disadvantaged children as defined herein. Added by act approved Aug. 28, 1965, L.1965, p. 222.

14D-2. Definitions. For purposes of this Article:

“Educationally disadvantaged children” means children between the ages of 12 and 16 years who do not qualify for the special educational services provided for in Article 14 of this Act but who, because of their home and community environment, are subject to such language and cultural economic and living conditions that it is unlikely they will graduate from high school unless such educational programs, procedures, and services, supplementing the regular public school program, are made available to them.

“Compensatory education program” means a program of instruction and services supplementary to the regular public school program for educationally disadvantaged children including services, in school, those who have dropped out of school prior to graduation, and those who have not entered first grade. “Compensatory education program” includes not such programs as provide for instruction and services to all educationally disadvantaged children of the school district, including those who attend non-public schools organized for profit, without regard to whether enrolled in any other program or course offered by the school district. Such a program may be offered inside or outside of the regular school day and includes:

(1) individually planned instruction;
(2) individualized instruction;
(3) remedial instruction;
(4) activities planned to broaden the cultural experience of such children;
(5) working relationships with parents and guardians of such children;
(6) special counseling and counseling of such children and persons in the homes of such children;
(7) cooperation with local state and federal agencies, private facilities, services or activities for such children;
(8) employment of additional teachers where it is necessary to reduce the size of regular classes for such children; and
(9) such other programs meeting the standards of this Act and the regulations and requirements of the Federal Elementary and Secondary Education Act of 1965. They are directed to the elimination of the educational and cultural disadvantage of such children or to assisting and encouraging high school dropouts to complete the requirements for graduation. Added by act approved Aug. 28, 1965, L.1965, p. 222.


14D-4. Advisory Council. There is created an Advisory Council on Compensatory Education consisting of 5 members appointed by the Superintendent of Public Instruction, who shall hold office for 3 years, except that the initial appointments shall be for terms of from 1 to 2 years. "In the appointment of the members, one of the councils shall be for the full term of years, and the remaining members shall be for terms of the full number of years of the term of the member on the occasion of the expiration of the term.

The members appointed shall be citizens of the United States and of this State and shall be such...
CHAPTER 1—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act

AGENCY: U.S. Office of Education, HEW.

ACTION: Final regulation.

SUMMARY: These regulations implement amendments to Part B of the Education of the Handicapped Act as required by the Education for All Handicapped Children Act of 1975. They: (1) Amend the existing regulations governing assurances to States for education of handicapped children; (2) add a new part on incentive grants programs for handicapped children aged three through five; and (3) making certain conformity amendments to the general provisions for State-administered programs.

These regulations govern the provision of funding by the Federal Government to State and local educational agencies to assist them in the education of handicapped children.

The regulations include provisions which are designed: (1) to assure that all handicapped children have available to them a free appropriate public education; (2) to assure that the rights of handicapped children and their parents are protected; (3) to assist States and localities to provide for the education of handicapped children; and (4) to assess and assure the effectiveness of efforts to educate such children.

These regulations also include the final rules for counting and reporting handicapped children. (The child counts rules were published in proposed form on September 8, 1976, and were incorporated into the December 30 proposed regulations for the convenience of the reader.)

EFFECTIVE DATE: October 1, 1977.

FOR FURTHER INFORMATION CONTACT:

Daniel Rangelheim, Director, Division of Inquiries to States, Bureau of Education for the Handicapped, 460 Maryland Ave., SW., Room 4040, Donohoe Building, Washington, D.C. 20220, telephone: 202-423-2268.


SUPPLEMENTARY INFORMATION:

Rulemaking History—Public Participation

Because of the potential impact that Pub. L. 94-143 will have on the education of handicapped children throughout the Nation and on the agencies that serve them, the Office of Education requested the need for intensive public participation in the development of regulations, and took steps to insure maximum public involvement throughout the entire rulemaking process. A description of these steps is included in the following paragraphs:

Before the proposed rules were drafted, the Office of Education conducted a massive effort to obtain comments and suggestions for developing regulations from interested parties throughout the Nation. This involved participating in approximately 23 meetings about the law conducted on both a regional and special interest basis. Approximately 2,200 people participated in these meetings and several hundred comments were received.

In June 1976, the Office of Education convened a national writing group of approximately 170 people to develop concept papers for use in writing the regulations. Approximately 150 people attended the two meetings, and several hundred comments were received.

In December 30, 1976, the proposed rules were published in the Federal Register. Written comments and recommendations on the proposed rules were invited for a 30-day comment period ending March 1, 1977; and public hearings were held in Washington, San Francisco, Denver, Boston, and the Atlanta. Over 1,000 written comments were received during that period, all of which are available and considered by the Office of Education in preparing these final regulations.

In addition to the above public comment activities, the Office of Education continued with public participation efforts, including:

(1) Participating in 10 regional meetings to assist in the education of handicapped children aged three through five. Congress established incentive grants in the recognition that when children are first detected as handicapped at the earlier stages of development: (1) benefits are maximized; (2) additional and more severe handicaps may be prevented; and (3) greater long-term cost effectiveness is realized.

Comment: An issue was raised concerning the possible use of incentive grants for children from birth through two years of age.

Response: Section 611 of the Act and the legislative history specify that the use of incentive grant funds is limited to children aged three through five years.

However, the legislation in section 611 of the Act may be used for children from birth through age twenty.

Comment: An issue was raised as to whether incentive grant funds may be

PART 111B—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

The Office of Education conducted a careful review of the public comments received and summarized them by subpart and topic. A very large number of comments dealt with specific statutory requirements. Most of these comments expressed concerns about the statute and suggested changes to be made in the statutory provisions. However, because they are statutory, the Office of Education is not able to make any changes in the regulations on wires the or those points. Some of the statutory provisions by which comments were received, together with concerns to the content of these provisions:

(1) Free appropriate public education—problems with timelines concern: the cost of implementing this requirement;

(2) Priorities—concerns about Federal priorities which are not consistent with State and local priorities;

(3) Individualized education programs—suggestions that the requirement be lessened, that more funds are available for implementing:

(4) Prior notice and other due process procedures—concerns about the amount of detail in these requirements and the time, cost and paper work involved in their implementation:

(5) State educational agency responsibility for general supervision of all special education programs in the State—concerns about lack of authority over other State agencies and the lack of funds to adequately implement the programs:

(6) Child count—concerns about the data on which the State is based.

Another large number of commenters cited specific concerns or issues with respect to the content of the proposed rules. Because of the large number of comments received, individual comments have been consolidated.

PART 111C—INCENTIVE GRANTS

Part 111B sets forth the conditions under which States may receive grants to assist in the education of handicapped children aged three through five. Congress established incentive grants in the recognition that when children are first detected at the earlier stages of development: (1) benefits are maximized; (2) additional and more severe handicaps may be prevented; and (3) greater long-term cost effectiveness is realized.

Comment: An issue was raised concerning the possible use of incentive grants for children from birth through two years of age.

Response: Section 611 of the Act and the legislative history specify that the use of incentive grant funds is limited to children aged three through five years.

However, the legislation in section 611 of the Act may be used for children from birth through age twenty.

Comment: An issue was raised as to whether incentive grant funds may be
RULES AND REGULATIONS

ORGANIZATION OF REGULATIONS

Three parts of Title 45 of the Code of Federal Regulations are amended by this document:

(1) Part 1009—State Administered Programs. This includes certain conforming amendments to the regulations under section 436(b)(1)(A) of the General Education Provisions Act.

(2) Part 1211—Assistance to States for Education of Handicapped Children. This is divided into seven subparts: (A) General, (B) State Annual Program Plans and Local Applications, (C) Service Areas, (D) Eligibility and Service Areas, (E) Procedural Safeguards, (F) State Administration, and (G) Allocation of Funds and Reports.

(3) Part 1215—Incentive Grants. This governs the administration of the incentive grants programs for handicapped children aged three through five, authorized under section 619 of the Act.

ANALYSIS OF REGULATIONS

Appendix A of Part 1211 includes an analysis of each subpart, which (1) discusses significant comments received and the action taken with respect to those comments, and (2) explains the necessary changes made from the proposed rules published on December 30, 1974.

Topical Index

Appendix B of Part 1211 includes an index of the major topics in the regulations, from appropriate public education, priorities, and individualized education programs and the specific sections in which they are found.

NOTE—The Department of Health, Education, and Welfare, has determined that the regulations contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11512 and 11596 and OMB Circular A-41, and certifies that an Economic Impact Analysis has been prepared. However, because the purpose of such regulations involving major issues is typically identical to the contents of subpart D of the regulations promulgated against the handicapped under section 616 of the Reorganization Act of 1977, 44 Fed. Reg. 1036, published May 4, 1977, at 42 FR 22978; the Department has determined that: (a) the regulations are substantial in nature as proposed by Part 1009; and the pertinent parts of the EIA Statement for those regulations meet the EIA requirements for this regulation. Only regulations imposing the following requirements: (1) appropriate education to handicapped children, (2) assignment and evaluation of handicapped children, and (3) provisions for handicapped children and their parents.

(Catalog of Federal Domestic Assistance Number 13.440, Reauthorization Handicapped Children, Part B.)


JOHN EISEN

Acting U.S. Commissioner of Education


E. ALICE CRAMPTON

Acting Secretary of Health, Education, and Welfare.
3. If a provision listed in paragraph (d) of this section is different in wording from an assurance in the general application, the provision listed in that paragraph governs any question of compliance with the assurance.


2. In Part 1008, 11008.35 is revised to read as follows:

11008.35 Effective date of an application, plan, or amendment.

(a) Federal funds are available only for obligations incurred under:

(1) A State plan approved by the Commissioner in the case of the programs referenced in 11008.10 under the Federal funds are available only for obligations incurred under:

(2) A general application and an annual program plan approved by the Commissioner in the case of the programs referenced in 11008.10(a). (b).

(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date when it is submitted to the Federal Government in substantially approved form. However, the effective date cannot be earlier than the first day of the fiscal period for which it is submitted.

(c) The Commissioner sends the State a notice of approval, including notice of the effective date, when the application, plan, or amendment is approved.

(d) Federal funds are not available for obligation by a State or local agency before the effective date of the State plan or annual program plan (whichever is submitted under paragraph (a) of this section). If funds are expressly made available by statute for the development of the State plan, general application, or annual program plan, the first sentence of this paragraph does not apply to obligations by the State for that purpose.

(20 U.S.C. 1321(e); 1328(b); 1328(c)(1) (a)(1)(E)).

3. In Part 1008, 11008.53 is revised to read as follows:

11008.53 Obligation by recipients.

(a) Period for obligations. Federal funds which the Federal Government may obligate during a fiscal period remain available for obligation by State and local recipients through the end of that fiscal period. Federal funds made available for construction of facilities remain available for obligation by State and local recipients for that purpose for a reasonable period of time as determined by the Commissioner.

(b) Construction. In accordance with section 44(b) of the General Education Funds Act, Federal funds which are not obligated by the Federal funds which the Federal Government may obligate during a fiscal period remain available for obligation by State and local recipients before the end of the fiscal period for obligation by those agencies for one additional fiscal year.

(c) Determinations of obligations. (1) An obligation of the acquisition of real or personal property, for the construction of facilities, or for the performance of work, is incurred by a recipient on the date it makes a binding written commitment.

(2) An obligation for personal services, for services performed by public utilities, for travel, or for the rental of real or personal property, is incurred by a recipient on the date it receives the services, its personal takes the travel, or it uses the rented property.

(20 U.S.C. 1321(e); 1328(b); 1328(c)(1) (a)(1)(E)).
RULES AND REGULATIONS

121A.100 Review of public comments before adopting plan.
121A.104 Publication and availability of approved plan.

Subpart C—General

Part II—Appropriate Public Education
121A.200 Timeliness for free appropriate public education.
121A.201 Free appropriate public education—conditions and payments.
121A.206 Residential plausibility.
121A.206a Proper functioning of hearing aids.
121A.206b Full educational opportunity goal.
121A.206c Program systems.
121A.206d Nonacademic services.
121A.207 Physical education.

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121A.300 Definitions of "least priority children" and "second priority children.

Subpart A—Prerequisites
121A.302 Services to other children.
121A.303 Application of local educational agency funds for the second priority.

INTERNATIONAL EDUCATION PROGRAGMS
121A.400 Definitions.
121A.401 State educational agency responsibility.
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121A.403 Participation in meetings.
121A.404 Parent participation.
121A.404a Content of international education program.
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121A.404d Individualized education programs for autonomous children.

Subpart E—Dispute Resolution

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121A.500 Definitions of "complaint", "evaluation", and "personally identifiable information.
121A.501 General responsibility of public agencies.
121A.502 Opportunity to examine records.
121A.503 Independent educational evaluations.
121A.504 Prior notice; parent consent.
121A.505 Consent of parents.
121A.506 Impartial due process hearing.
121A.507 Hearing examiner.
121A.508 Hearing rights; appeal.
121A.509 Administrative appeal; impartial service.
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121A.511 Timeliness and conveniences of hearings and reviews.
121A.512 Child's name during proceedings.
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Protection of Evaluation Procedures
121A.600 General.
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121A.602 Evaluation procedures.
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Least Restrictive Environment
121A.700 General.
121A.701 Handbook for educational agencies—interpretation.
121A.702 Handbook for educational agencies—interpretation.
121A.703 Handbook for educational agencies—interpretation.
121A.708 Participation by director of special education.
121A.710 Participation in jurisprudence.

121A.720 Annual report of children served—summary report.
121A.731 Annual report of children served—information required in the report.
121A.732 Annual report of children served—corrections.
121A.734 Annual report of children served—state responsibilities of the State educational agency.

Appendix A—Analysis of Final Regulations (child OPF Part 112:1 Under Part B of the Education of the Handicapped Act)
Appendix B—Index to Part 121A.

Appendix A—General

Requirements, Applicability, and General Provisions Regulations
§ 121A.1 Purpose.

The purpose of this part is:
(a) To ensure that all handicapped children have available to them a free appropriate public education which in

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choses special education and related services to meet their unique needs.
(b) To insure that the rights of handicapped children and their parents are protected.
(c) To assure States and localities to provide for the education of all handicapped children, and
(d) To assess and insure the effectiveness of efforts to educate these children.
(20 U.S.C. 1416 New.)
§ 1121.2 Applicability to State, local, and private agencies.
(a) States. This part applies to each State which receives payments under Part B of the Education of the Handicapped Act.
(b) Public agencies within the State. The requirements of this part apply to each political subdivision of the State which is involved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as Departments of Mental Health and Welfare and State schools for the deaf and blind), and (4) State correctional facilities.
(c) Private schools and facilities. Each public agency in the State is responsible for seeing that the rights and protections afforded the handicapped children in private schools and facilities by that public agency.
(See § 121a.400-121a.427.)
(b) 20 U.S.C. 1414(a), (b), 1416(a), 1416(a).
(b) 20 U.S.C. 1416(a).
Comment. The requirements of this part are being honored by each public agency that has direct or indirect control over the provision of special education and related services in a State that receives funds under Part B of the Act. Regardless of which public agency is receiving funds under Part B.
§ 1121.3 General provisions: regulations.
Assistance under Part B of the Act is subject to regulations promulgated by the Secretary under the provisions of this chapter, which include definitions and requirements relating to fiscal, administrative, property management, and other matters.
(20 U.S.C. 1417(b).)
Disproportionates.
adversely affects a child's educational performance.

(11) "Vocally handicapped" means a child who, even with correction, adversely affects a child's educational performance. The term includes both partially hearing and blind children.


§ 121a.6 Insideout.

As used in this part, the term "insideout" means that the terms names are not all of the possible items that are covered, whether like or unlike the same.


§ 121a.7 Intermediate educational unit.

As used in this part, the term "intermediate educational unit" means any public authority, other than a local educational agency, which:

(a) Is under the local supervision of a State educational agency;
(b) Is established by State law for the purpose of providing integrated public education on a regional basis; and
(c) Provides special education and related services to handicapped children within such States.


§ 121a.8 Local educational agency.

As used in this part, the term "local educational agency" means a public board of education or other public agency responsible for the education or schooling of all children in a State for either administrative control or direction of, or to perform a service function for public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. Such term also includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

(a) For the purposes of this part, the term also includes local educational units.

(b) 20 U.S.C. 1401(b).

§ 121a.9 Native language.

As used in this part, the term "native language" has the meaning given to the term by section 703(a)(7) of the ESEA.

(a) The term "language" means the language normally used by that person, and in the case of a child, the language normally used by the parents of the child.

(b) 20 U.S.C. 1401(1) (l) (12).

(b) Conversely, Section 703(2) of the ESEA of the Handicapped Act means that the term "language" means the language normally used by the person or the parents of the child.

§ 121a.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, or a surrogate parent who has been appointed as such in a State.

20 U.S.C. 1416(b).

Comment. The term "parent" is defined to include persons acting in the place of a parent, such as a grandparent or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

§ 121a.11 Public agency.

As used in this part, the term "public agency" includes the State educational agencies, intermediate educational units, and any other political subdivisions of the State which are providing education to handicapped children.

20 U.S.C. 1413(b)(2); 1414(b); 1415(b).

§ 121a.12 Qualified.

As used in this part, the term "qualified" means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.


§ 121a.13 Related services.

(a) The terms used in this definition are defined as follows:

(1) "Academic" includes:

(1) Identification of children with hearing loss:

(b) The terms used in this definition are defined as follows:

(1) "Academic" includes:

(1) Identification of children with hearing loss:

(1) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing.

(1) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing.

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation, and speech conservation.

(4) Counseling and guidance of pupils, parents, and teachers regarding hearing loss.

(5) Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and determining the effectiveness of amplification.

(3) "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(4) "Early identification" means the implementation of a formal plan for identifying a child's disability as early as possible in a child's life.

(5) "Medical services" means services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

(6) "Occupational therapy" includes:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) Improving ability to perform tasks for independent functioning when functions are impaired or lost;

(3) Preventing, through early intervention, initial or further impairment or loss of function.

(7) "Parent counseling and training" means assistance in understanding the special needs of their child and providing parents with information about child development.

(8) "Physical therapy" means services provided by a qualified physical therapist.

(9) "Psychological services" includes:

(a) Administering psychological and educational tests, and other assessment procedures;

(b) Interpreting assessment results;

(c) Providing, interpreting, and interpreting information about child behavior and conditions resulting in the need for special education and related services.

(10) "School counseling, guidance, and related services" includes:

(a) Counseling service provided by a qualified school counselor or other qualified personnel.

(b) "School social services" includes:

(a) "Social work services in schools" includes:

(1) Preparing a social or developmental history on a handicapped child:
RULES AND REGULATIONS

§ 121.60 Group and individual counseling with the child and family.

§ 121.60(a)(1) Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school; and

§ 121.60(a)(2) Ministry school and community resources to enable the child to receive maximum benefit from his or her educational program.

§ 121.61 Speech pathology includes:

§ 121.61(a) Identification of children with disabilities;

§ 121.61(b) Diagnosis and appraisal of specific speech or language disabilities;

§ 121.61(c) Referral for medical or other professional attention necessary for the habilitation of speech or language disorders;

§ 121.61(d) Provision of speech and language services for the habilitation or prevention of communicative disorders; and

§ 121.61(e) Counseling and guidance of parents, children, and teachers regarding speech and language problems.

§ 121.62 Transportation includes:

§ 121.62(a) Travel to and from school and between schools;

§ 121.62(b) Travel in and around school buildings;

§ 121.62(c) Specialized equipment (such as special or adapted buses, lift, and ramps); and

§ 121.62(d) Provided to special transportation for a handicapped child.

Subpart B—State Annual Program Plans

§ 121.110 Contents of plan.

(a) Each annual program plan must contain the provisions required in this subpart.

(b) Each annual program plan must include:

§ 121.110(a)/(c) Certification by the State educational agency to the Commissioner that the plan:

§ 121.110(a) has been adopted by the State educational agency;

§ 121.110(b) is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

§ 121.110(c) is authorized by the State Attorney General or other authorized State legal official that:

§ 121.110(c)(1) The State educational agency has authority under State law to carry out the plan and to administer or to supervise the administration of the plan, and

§ 121.110(c)(2) All plan provisions are consistent with State law.

Subpart C—Procedural Requirements

§ 121.113 Approval of plan.

(a) The Commissioner shall approve an annual program plan which meets the requirements of this part and Subpart B of Part 100 of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity to hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in §§ 121.200—121.203 of Subpart B for a hearing under this section.

§ 121.114 Effective period of annual program plan.

(a) Each annual program plan is effective for a period from the date it becomes effective under 1060.33 of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

Subpart D—State Annual Program Plan

ANNUAL PROGRAM PLAN—GENERAL

§ 121.115 State.

As used in this part, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

§ 121.115(b)(1) Federal Register, Vol. 42, No. 163—Tuesday, August 23, 1977
ANNUAL PROGRAM PLANS—CONTENTS
§ 121a.120 Public participation.
(a) Each annual program plan must include procedures which insure that the requirements in § 121a.260–121a.264 are met.
(b) Each annual program plan must also include the following:
(1) A statement describing the methods used by the State educational agency to provide notice of the public hearings on the annual program plan. The statement must include:
(a) A copy of each news release and announcement used to provide notice.
(b) A list of the newspapers and other media in which the State educational agency announced or published the notice, and
(c) The dates on which the notice was announced or published.
(2) A list of the dates and locations of the public hearings on the annual program plan.
(3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments.
(4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b)(1) of this section.
(5) [Reserved]
§ 121a.121 Right to a free appropriate public education.
(a) Each annual program plan must include information which shows that the State has in effect a policy which insures that all handicapped children have the right to a free appropriate public education within the age ranges and timelines under § 121a.122.
(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.
(c) The information must show that the policy:
(1) Applies to all public agencies in the State;
(2) Applies to all handicapped children;
(3) Implements the priorities established under § 121a.127(a)(1) of this subpart; and
(4) Establishes timelines for implementing the policy, in accordance with § 121a.123.
(6 U.S.C. 1412(1)(B), (6), 1415(a)(1))
§ 121a.122 Timelines and ages for free appropriate public education.
(a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake in order to ensure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1989.
(b) Documents relating to timelines. Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.
(c) Exception. The requirement in paragraph (b) of this section does not apply to a State with respect to handicapped children aged three, four, five, eight, nineteen, twenty, or twenty-one, to the extent that the requirement would be inconsistent with State law or practice, or the order of any court, respecting public education for one or more of those age groups in the State.
(6 U.S.C. 1412(1)(B))
§ 121a.123 Full educational opportunity goal—data requirement.
Each annual program plan must include in detail the policies and procedures which the State will undertake, or has undertaken, in order to ensure that the State has a goal of providing full educational opportunity to all handicapped children aged birth through twenty-one.
(6 U.S.C. 1412(1)(A))
§ 121a.124 Full educational opportunity goal—data requirement.
Beginning with school year 1978–1979, each annual program plan must contain the following information:
(a) The estimated number of handicapped children who need special education and related services.
(b) For the current school year:
(1) The number of handicapped children aged birth through two, who are receiving special education and related services; and
(2) The number of handicapped children:
(i) Who are receiving a free appropriate public education;
(ii) Who need, but are not receiving a free appropriate public education;
(iii) Who are enrolled in public and private institutions who are receiving a free appropriate public education; and
(iv) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.
(c) The estimated number of handicapped children who are expected to receive special education and related services during the next school year.
(d) A description of the basis used to determine the data required under this section.
§ 121a.125 Full educational opportunity goal—data requirement.
(a) General. Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.
(b) Content of timetable. (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.
(2) The data required under this paragraph must be provided:
(i) For each disability category except for children aged birth through two;
(ii) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.
(6 U.S.C. 1412(1)(A))
§ 121a.126 Full educational opportunity goal—data requirement.
(a) General. Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State as the State must do to meet the goal of providing full educational opportunity for all handicapped children. The State educational agency shall include the data required under paragraph (b) of this section and whatever additional data are necessary to meet the requirement.
(b) Statistical description. Each annual program plan must include the following data:
(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and

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the number of each of those who are currently employed in the State.

(2) The number, kind, and type of facilities needed for handicapped children and the number of each kind currently in use in the State, including the number of schools, residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, and other facilities.

(3) The total number of transportation units needed for handicapped children, the number of transportation units in use in the State, and the number of handicapped children who use these units to attend special education.

(b) Date categories. The data received under paragraphs (a) of this section must be broken down by the following:

(1) Estimates for serving all handicapped children who require special education and related services.

(2) Current year data, based on the actual services of handicapped children receiving special education and related services as reported under Subpart C, and

(3) Estimates for the next school year.

§ 121a.127 Procedure.

(a) General requirement. Each annual program plan must include information which shows that:

(1) The State has established priorities which meet the requirements under §§ 121a.325-121a.328 of Subpart C;

(2) The State has made progress in meeting those priorities;

(3) The State has made progress in meeting the requirements of paragraphs (b) of this section.

(b) Child data. (1) Each annual program plan must show the number of handicapped children known by the State to be in each of the first two priority groups named in §§ 121a.121 of Subpart C:

(2) By disability category, and

(3) By the age ranges in §§ 121a.124(e) and 121a.125.

(c) Description and resources. Each annual program plan must show for each of the first two priority groups:

(1) The programs, services, and activities that are being carried out in the State;

(2) The Federal, State, and local resources that have been committed during the current academic year and

(3) The programs, services, and activities, and resources that are to be provided during the next school year.

§ 121a.128 Identification, location, and evaluation of handicapped children.

General requirement. Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under this part.

(b) Information. Each annual program plan must:

(1) Designate the State agency (other than the State educational agency) responsible for coordinating the planning and implementation of the policies and procedures under paragraphs (a) of this section;

(2) Name each agency that participates in the planning and implementation and describe the nature and extent of its participation;

(3) Describe the extent to which:

(i) The services described in paragraph (a) of this section have been achieved under the current annual program plan; and

(ii) The resources needed for these activities in that plan have been used;

(4) Describe each type of activity to be carried out during the next school year, including the role of the agency named under paragraphs (b) (1) of this section, timelines for completing those activities, resources that will be used, and expected outcomes;

(5) Describe how the policies and procedures under paragraph (a) of this section will be monitored to ensure that the State educational agency obtains:

(i) The number of handicapped children within each disability category that have been identified, located, and evaluated;

(ii) Information adequate to evaluate the effectiveness of those policies and procedures: and

(6) Describe the method the State uses to determine which children are currently receiving special education and related services and which children are not receiving special education and related services.

§ 121a.128.1 Comment. The State is responsible for insuring that all handicapped children are identified, located, and evaluated, including children in all public and private agencies and institutions in the State. Therefore, the use of data is subject to the confidentiality requirements in §§ 121a.325-121a.328.

§ 121a.129 Confidentiality of personally identifiable information.

(a) Each annual program plan must include in detail the policies and procedures which the State will undertake in order to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under part E.

(b) The Commissioner shall use the criteria in §§ 121a.340-121a.376 of Subpart E to evaluate the policies and procedures of the State under paragraph (a) of this section.

§ 121a.130 Individualized education programs.

(a) Each annual program plan must include information which shows that each public agency in the State maintains records of the individualized education programs for each handicapped child, and each public agency establishes, reviews, and revises each program as provided in Subpart C.

(b) Each annual program plan must include:

(1) A copy of each State statute, policy, and standard that requires the manner in which individualized education programs are developed, implemented, reviewed, and revised;

(2) A copy of each requirement under part B which the State educational agency follows in monitoring and evaluating these programs.

§ 121a.131 Procedural safeguards.

(a) Each annual program plan must include procedural safeguards which insure that the requirements in §§ 121a.300-121a.316 of Subpart E are met.

§ 121a.132 Least restrictive environment.

(a) Each annual program plan must include procedures which insure that the requirements in §§ 121a.330-121a.356 of Subpart E are met.
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(b) Each annual program plan must include the following information:
(1) The number of handicapped children in the State, within each disability category, who are participating in regular education programs, consistent with §121a.550-121a.554 of Subpart E.
(2) The number of handicapped children who are in separate classes or separate school facilities, or who are otherwise removed from the regular education environment.
(20 U.S.C. 1415(b) (B)).

§ 121a.133 Provisions in evaluation procedures.

Each annual program plan must include procedures which ensure that the provisions in §121a.530-121a.534 of Subpart E are met.
(20 U.S.C. 1415(b) (C)).

§ 121a.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in §121a.400 of Subpart F are met.
(20 U.S.C. 1415(a)).

(b) The information under paragraph (a) of this section must include a copy of each State's special education regulations, signed agreement between respective agency officials, and any other document that shows compliance with that paragraph.
(20 U.S.C. 1415(b)).

§ 121a.135 Monitoring procedures.

Each annual program plan must include information which shows that the requirements in §121a.401 and §121a.402 of Subpart F are met.
(20 U.S.C. 1415(b)).

§ 121a.136 Implementation process—State educational agency.

Each annual program plan must describe the procedures the State educational agency follows to inform each public agency of its responsibility for insuring effective implementation of procedures safeguarding the handicapped children served by that public agency.
(20 U.S.C. 1415(b)).

§ 121a.137 Procedures for consultation.

Each annual program plan must include assurance that in carrying out the requirements of section 612 of the Act, procedures are established for consultation with individuals involved in or concerned with the education of handicapped children, including handicapped individuals and parents of handicapped children.
(20 U.S.C. 1415(b)).

§ 121a.138 Other Federal programs.

Each annual program plan must provide that programs and procedures are established to insure that funds received by the State or any public agency in the State under any other Federal program, including section 121 of the Elementary and Secondary Education Act of 1968 (20 U.S.C. 281-289), section 308 (b)(8) of that Act (20 U.S.C. 1234f(b)(8)), or Title IV-C of that Act (20 U.S.C. 1231), and section 110(a) of the Vocational Education Act of 1963, under which there is specific authority for assistance for the education of handicapped children, are used by the State, or any public agency in the State, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.
(20 U.S.C. 1415(c)).

§ 121a.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under §121a.365-121a.367 of Subpart C.
(20 U.S.C. 1415(a) (D)).

§ 121a.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.
(20 U.S.C. 1415(a) (E)).

§ 121a.141 Recovery of funds for misclassified services.

Each annual program plan must include policies and procedures which insure that the State seeks to recover any funds provided under Part B of the Act for services to a child who is determined to be inaccurately classified as eligible to be counted under section 611(a) or (g) of the Act.
(20 U.S.C. 1415(a) (F)).

§ 121a.142 Control of funds and property.

Each annual program plan must provide assurance to the Commissioner that the control of funds provided under Part B of the Act, and title to property acquired with those funds, is in a public agency for the uses and purposes provided in this part, and that a public agency administers the funds and property.
(20 U.S.C. 1415(a) (G)).

§ 121a.143 Records.

Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under Part B of the Act.
(20 U.S.C. 1415(a) (H)).

§ 121a.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency receives and responds to any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.
(20 U.S.C. 1415(a)(8)).

§ 121a.145 Prohibition of screenings.

Each annual program plan must provide assurance satisfactory to the Commissioner that funds provided under Part B of the Act are not commingled with State funds.
(20 U.S.C. 1415(a)(9)).

Comment. This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditure of the Part B funds. Separate bank accounts are not required. (See 48 FR 1099, Subpart P (Cash Depositories)).

§ 121a.146 Annual evaluation.

Each annual program plan must include procedures for evaluation at least annually of the effectiveness of programs in meeting the educational needs of handicapped children, including evaluation of individualized education programs.
(20 U.S.C. 1415(a) (11)).

§ 121a.147 State advisory panel.

Each annual program plan must provide that the requirements of §121a.145-121a.146 of Subpart P are met.
(20 U.S.C. 1415(a) (12)).

§ 121a.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures designed to assure that funds paid to the State under Part B of the Act are spent in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(d), 612(b), and 612(d) of the Act.
(20 U.S.C. 1415(a) (13)).

§ 121a.149 Description of use of Part B funds.

(a) State allocation. Each annual program plan must include the following information about the State's use of funds under §121a.290 of Subpart C and §121a.620 of Subpart P:
(1) Analysis of administrative positions and a description of duties for each person whose salary is paid in whole or in part from those funds.
(2) For each position, the percentage of salary paid with those funds.
(3) The percentage of professional and support personnel whose salaries are paid in whole or in part from those funds.
(4) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.
(5) A description of each direct service and each support service which the State educational agency will provide during the next school year with those funds.
(6) A description of each unit of administrative activity the State educational agency will carry out during the next school year with those funds.

(b) Local educational agency allocation. Each annual program plan must include:
(1) An estimate of the number and percentage of local educational agencies in the State which will receive an allocation under this part (other than local educational agencies which submit a consolidated application).

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(2) An estimate of the number of local educational agencies which will receive an allotment under a consolidated application.

(3) An estimate of the number of consolidated applications and the average number of local educational agencies per application.

(4) A description of direct services the State educational agency will provide under \( \| 121a.180 \) of Subpart C.

(30 U.S.C. 1608(b)(1); 1608(b)(1))

\( \| 121a.183 \) Meaning the excess cost requirement.

(a) A local educational agency must establish the excess cost requirement if it has on the average spent at least the minimum amount described under \( \| 121a.184 \) for the education of its handicapped children. This amount may not include capital costs.

(b) Each local educational agency must keep records adequate to show that the excess cost requirement.

(30 U.S.C. 1608(26); 1604(a)(1)(A))

Comment. The following is an example of how a local educational agency might compute the average minimum amount at issue for the education of each of its handicapped children under \( \| 121a.183 \). This example is meant to provide an illustration of the nature and requirements of the local educational agency must make the computations for handicapped children in its elementary school district and a separate computation for handicapped children in its secondary school district. The computations for handicapped elementary school students would be done as follows:

(a) First, the local educational agency must determine the total amount of expenditures for each of its elementary school students who are handicapped under Part B in the preceding school year. This total is divided by the number of such students to determine the average minimum amount at issue for the education of each of its handicapped children.

Example: A local educational agency spent $9,730,000 for special educational services in the preceding school year for handicapped students. This amount is divided by 130 students, resulting in an average minimum amount at issue of $74,692.

(2) From State funds................. 7,480,000

(b) From Federal funds................ 2,250,000

(c) Of this total, $8,680,000 was for special educational services in the preceding school year.

Total expenditures for elementary school students (lapse capital outlay and debt service). $11,500,000

This amount is divided by the total number of students to determine the average minimum amount at issue for each of its secondary school students.

Example: A local educational agency spent the following amounts for special educational services in the preceding school year:

Total expenditures for secondary school students (lapse capital outlay and debt service). $13,000,000

This amount is divided by the total number of secondary school students to determine the average minimum amount at issue for each of its secondary school students.

Example: A local educational agency spent the following amounts for special educational services in the preceding school year:

(c) From State funds................. 9,000

(d) From Federal funds................ 4,000

This amount is divided by the total number of secondary school students to determine the average minimum amount at issue for each of its secondary school students.

Example: A local educational agency spent the following amounts for special educational services in the preceding school year:

(a) From State funds................. 5,000

(b) From Federal funds................ 3,000

This amount is divided by the total number of secondary school students to determine the average minimum amount at issue for each of its secondary school students.
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(8) From a locally-funded program, for handicapped children, $200,000.

(9) From a grant for a bilingual education program under Title VII of the Elementary and Secondary Education Act of 1968, $150,000.

Total: $600,000.

(4) Local educational agencies may include any other funds it deems important to educational purposes: handicapped children, educationally deprived children, and bilingual education. The agency must have the following minimum speaking ability:

$200,000 or $1,000.

The local educational agency must be determined by the average number of students served in the elementary school, of the agency last year (including bilingual education).

Example: Last year, an average of 7,000 students were served in the agency's elementary schools. The school must be divided into the amount shown in the above paragraph.

28,000

7,000 students

$4,000,000

$1,000,000

$3,000,000

$2,000,000

$1,000,000

The local educational agency must be determined by the average number of students served in the elementary school, of the agency last year (including bilingual education).

Example: Last year, an average of 7,000 students were served in the agency's elementary schools. The school must be divided into the amount shown in the above paragraph.

28,000

7,000 students

$4,000,000

$1,000,000

$3,000,000

$2,000,000

$1,000,000

This figure is in the minimum amount that the local educational agency must spend (on average) for the education of each of the handicapped students. Funds under Part B may be used only for those over used above this minimum. In this example, if the local educational agency has 100 handicapped elementary school students, it must keep records to show that it has spent at least $12,000,000 for the education of those students (100 students times $12,000 average per student for the education of each student).

$1,000,000 may come from any fund source, under Part B, subject to any legal requirements that govern the use of those other funds.

If the local educational agency has handicapped secondary school students, it must do the same computation for them. However, since the need for the handicapped secondary school students is less than the local educational agency spends for the education of the local educational agency's elementary school students, rather than for secondary students.

§ 121a.185 Compromise of excess costs—consolidated application.

The minimum average amount under §121a.183 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under §121a.184 in those agencies for elementary or secondary school students, as the case may be.

(30 U.S.C. 1414(a)(11))(1.)

§ 121a.186 Excess costs—limitations on use of Part B funds.

(a) The excess cost requirement prevents a local educational agency from using funds provided under Part B to pay for all of the costs directly attributable to the education of a handicapped child, subject to paragraph (b) of this section.

(b) The excess cost requirement does not prevent a local educational agency from using funds provided under Part B to pay for all of the costs directly attributable to the education of a handicapped child in any of the age ranges three, four, five, eight, eleven, thirteen, twelve, or twenty-one, if no local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-appropriating and other requirements of this part in providing the education and services.

(30 U.S.C. 1414(a)(5); 1414(b)(11)).

§ 121a.190 Consolidated applications.

(a) Voluntary applications. Local educational agencies may submit a consolidated application for payments under Part B of the Act.

(b) Required applications. A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency's enrollment is less than the $7,500 minimum required by section 611(b)(4)(A) of the Act (§121a.360(a)(1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) Use of proceeds. Under §121a.191, the State educational agency shall establish standards and procedures for determinations under paragraphs (b) and (c) of this section.

(30 U.S.C. 1414(c) (b)).

§ 121a.191 Payments under consolidated applications.

In any case in which a consolidated application is approved by the State educational agency, the payments to the participating local educational agencies must be equal to the sum of the entitlements to the separate local educational agencies.

(30 U.S.C. 1414(c) (b) (4)).

§ 121a.192 State regulations of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency's regulations must:

(1) Be consistent with section 611(1)-(7) and section 611(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(30 U.S.C. 1414(e) (b) (8)).

§ 121a.200 Local educational agency applications—contents.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to a local educational agency, determines that the application does not meet the requirements of this part, the agency shall determine the specification of any additions to the application which are necessary to meet the requirements of this part.

(b) The State educational agency shall consider any application received by the State educational agency under paragraph (a) of this section subject to the applicable notice and opportunity for hearing provisions in §121a.397.

(30 U.S.C. 1414(b)(2)).

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS.

§ 121a.209 Child identification.

Each application must include procedures which ensure that the identification of the handicapped child which is the basis of the educational program is maintained as accurate as possible and updated periodically. Each local educational agency must maintain and make available upon request for inspection by the public a record showing the name, address, age, date of birth, present and past diagnosis, date, and the disposition of any application received by the State educational agency from a local educational agency. Each local educational agency must maintain and make available upon request for inspection by the public a record showing the name, address, age, date of birth, present and past diagnosis, date, and the disposition of any application received by the State educational agency from a local educational agency.
special education and related services and those children who are currently receiving needed special education and related services.

(30 U.S.C. 1464(a)(1) (A)).

Government. The local educational agency is responsible for ensuring that all handicapped children, whose parents or guardians have indicated their wish for such services, are given the necessary programs. (30 U.S.C. 1464(a)(1))

§121a.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures that ensure that the criteria in §§121a.340-121a.346 of Support X and the IDEA are met.

(30 U.S.C. 1464(a)(1) (B)).

§121a.222 Facilities, personnel, and services.

(a) Each application must provide a description of the physical facilities, personnel, and services necessary to meet the goal in §121a.227.

(30 U.S.C. 1464(a)(1) (C)).

§121a.223 Priorities.

(a) Each application must include priorities which meet the requirements of §§121a.230-121a.234.

(30 U.S.C. 1464(a)(1) (D)).

§121a.224 Parent involvement.

(a) Each application must include procedures to ensure that, in meeting the goal under §121a.223, the local educational agency makes provisions for the participation of and consultation with parents of handicapped children and their families.

(30 U.S.C. 1464(a)(1) (E)).

§121a.225 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable and consistent with §§121a.350-121a.353 of Support X, the local educational agency provides special services to handicapped children which enable them to participate in regular educational programs.

(b) Each application must describe:

(1) The types of alternative placements that are available for handicapped children;

(2) The number of handicapped children and those children who are not handicapped but who are served in each type of placement.

(30 U.S.C. 1464(a) (1) (F)).

§121a.226 Public control of funds.

Each application must provide assurance satisfactory to the State educational agency that control of funds provided under Part B of the Act is to be exercised in a public agency for the use and purposes under this part, and that a public agency administers the funds and property.

(30 U.S.C. 1464(a) (2) (A)).

§121a.227 Equal access.

Each application must provide a description of the physical facilities, personnel, and services necessary to meet the goal in §121a.234.

(30 U.S.C. 1464(a)(2) (B)).

§121a.228 Nonrepealing.

(a) Each application must provide assurance satisfactory to the State educational agency that the local educational agency uses funds provided under Part B of the Act to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of handicapped children, and in no case to supplant those State and local funds.

(b) To meet the requirement in paragraph (a) of this section:

(1) The total amount of average per capita amounts of State and local school funds expended for special education services for handicapped children under Part B of the Act; and

(2) The local educational agency shall not use Part B funds to displace State or local funds for any particular purpose.

(30 U.S.C. 1464(a) (2) (C)).

§121a.229 Compliance.

(a) The local educational agency must provide services to handicapped children unless the agency uses State and local funds to provide services to those children which, taken as a whole, are at least comparable to services provided to other handicapped children in that local educational agency.

(c) The local educational agency shall maintain records which show that the agency meets the requirement in paragraph (b) of this section.

(30 U.S.C. 1464(a) (2) (D)).

§121a.230 Information—reports.

(a) Each application must provide that the local educational agency furnishes information, which in the case of reports relating to particular local educational agency and related to program objectives as may be necessary to enable the State educational...
agency to perform its duties under this part, including information relating to the educational achievement of handicapped children.

§ 121a.233 Records.
Each application must provide that the local educational agency keeps such records, and authorizes access to those records, as the State educational agency may find necessary to ensure the correctness and completeness of the information that the local educational agency furnishes under § 121a.232.

§ 121a.234 Public participation.
(a) Each application must:
(1) Provide for making the application and all documents related to the application available to parents and the general public; and
(2) Provide that all evaluations and reports required under § 121a.232 are public information.

(b) In implementing the requirement in paragraph (a)(1), the local educational agency shall use methods for public participation within its jurisdiction which are comparable to those required under § 121a.234 of this subpart. However, the local educational agency is not required to hold public hearings.

(20 U.S.C. 1414(a)(6).)

§ 121a.235 Individualized education program.
Each application must include procedures to ensure that the local educational agency complies with § 121a.346-121a.348 of Subpart C.

(20 U.S.C. 1414(a)(3).)

§ 121a.236 Local policies consistent with assurances.
Each application must provide assurances satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with section 611(d)-(7) and section 613(a) of the Act.

(20 U.S.C. 1414(a)(8).)

§ 121a.237 Procedural safeguards.
Each application must provide assurances satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of § 121a.300-121a.314 of Subpart E.

(20 U.S.C. 1414(a)(7).)

§ 121a.238 Use of Part B funds.
Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

(20 U.S.C. 1414(a).)

§ 121a.239 Nondiscrimination and nonenforcement of handicapped individuals.
(a) Each application must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title IV of the Code of Federal Regulations Part 94 (Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance). The local educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the specious employment of handicapped individuals under section 608 of the Act, which states:

'The Secretary shall assure that each recipient of assistance under this Act shall make prompt efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.'


§ 121a.239 Notice.
(a) The State educational agency shall provide notice to the general public of the public hearing.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan and its relation to Part B of the Education of the Handicapped Act.

(2) The availability of the annual program plan.

(3) The date, time, and location of each public hearing.

(4) The procedures for submitting written comments about the plan.

(5) The time for submitting comments.

(20 U.S.C. 1414(a)(6).)

APPLICATIONS TO THE SECRETARY OF INTERIOR
§ 121a.240 Submission of annual application and approval.
(a) In order to receive funds under this part, the Secretary of Interior shall submit an annual application which:

(b) Meets applicable requirements of section 614(b) of the Act;

(c) Includes other material as agreed to by the Commissioner and the Secretary of Interior.

(20 U.S.C. 1414(f).)

§ 121a.241 Public participation.
In the development of the application for the Department of Interior, the Secretary of Interior shall provide for public participation consistent with § 121a.250-121a.254.

(20 U.S.C. 1414(f).)

§ 121a.242 Use of Part B funds.
(a) The Department of Interior may use five percent of its payments in any fiscal year, or $200,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under § 121a.320-121a.324 of Subpart C.

(20 U.S.C. 1414(f).)

§ 121a.243 Applicable regulations.
The Secretary of Interior shall comply with the requirements under Subpart C and F.

(20 U.S.C. 1411(f)(3).)

§ 121a.249 Public hearing before adopting an annual program plan.
(a) Prior to its adoption of an annual program plan, the State educational agency shall:

(1) Make the plan available to the general public;

(2) Hold public hearings; and

(3) Provide a record of the hearing for comment by the general public on the plan.

(20 U.S.C. 1414(f).)

§ 121a.242 Notice.
(a) The State educational agency shall provide notice to the general public of the public hearing.

(b) The notice must be in sufficient detail to inform the public about:

(1) The purpose and scope of the annual program plan.

(2) The availability of the annual program plan.

(3) The date, time, and location of each public hearing.

(4) The procedures for submitting written comments about the plan.

(5) The time for submitting comments.

(6) The notice must be published or announced:

(1) In newspapers or other media, or both, with circulation adequate to notify the general public about the hearings; and

(2) Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

(20 U.S.C. 1414(f).)

§ 121a.248 Opportunity to participate; comments period.
(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The notice must be available for comments for a period of at least 30 days following the date of the notice.

(20 U.S.C. 1414(f).)

§ 121a.249 Review of public comments before adopting plans.
Before adopting its annual program plan, the State educational agency shall:

(a) Review and consider all public comments; and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1414(f).)

§ 121a.246 Available of approved plans.
After the Commissioner approves an annual program plan, the State educational agency shall:

(a) Review and consider all public comments; and

(b) Make any necessary modifications in the plan.

(20 U.S.C. 1414(f).)
§ 121a.300 Free appropriate public education

(a) Each State shall ensure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1977, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1983.

(b) Age range 1-6. This paragraph provides rules for applying the requirement in paragraph (a) of this section to infants and toddlers; that is, children under three, four, five, eighteen, nineteen, twenty, and twenty-one.

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the States must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to all handicapped children of the same age.

(3) If a public agency provides education to handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(4) If a public agency provides education to handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age group.

(c) Each State must have at least 300 persons preparing it to provide a free appropriate public education to handicapped children in one of these age groups:

(1) 75 persons, and 100 more to the extent that the age range begins at 20.

(2) 25 persons, and 100 more to the extent that the age range begins at 21.

(3) 30 persons, and 100 more to the extent that the age range begins at 22.

(4) 30 persons, and 100 more to the extent that the age range begins at 23.

(5) 30 persons, and 100 more to the extent that the age range begins at 24.

(d) The requirements in this section are to be implemented in accordance with plans prepared by local educational agencies and approved by the States.

§ 121a.301 Free appropriate public education

(a) Each State must have at least 300 persons prepared to provide a free appropriate public education to handicapped children in one of these age groups:

(1) 75 persons, and 100 more to the extent that the age range begins at 20.

(2) 25 persons, and 100 more to the extent that the age range begins at 21.

(3) 30 persons, and 100 more to the extent that the age range begins at 22.

(4) 30 persons, and 100 more to the extent that the age range begins at 23.

(5) 30 persons, and 100 more to the extent that the age range begins at 24.

(b) Each public agency must have at least 300 persons prepared to provide a free appropriate public education to handicapped children in one of these age groups:

(1) 75 persons, and 100 more to the extent that the age range begins at 20.

(2) 25 persons, and 100 more to the extent that the age range begins at 21.

(3) 30 persons, and 100 more to the extent that the age range begins at 22.

(4) 30 persons, and 100 more to the extent that the age range begins at 23.

(5) 30 persons, and 100 more to the extent that the age range begins at 24.

§ 121a.302 Residential placement.

(a) If placement in a public or private residential program is necessary to provide special education or related services to a handicapped child, the program, including medical, nursing or related services, must be at no cost to the parents of the child.

(b) The States must have at least 300 persons prepared to provide a free appropriate public education to handicapped children in one of these age groups:

(1) 75 persons, and 100 more to the extent that the age range begins at 20.

(2) 25 persons, and 100 more to the extent that the age range begins at 21.

(3) 30 persons, and 100 more to the extent that the age range begins at 22.

(4) 30 persons, and 100 more to the extent that the age range begins at 23.

(5) 30 persons, and 100 more to the extent that the age range begins at 24.

§ 121a.303 Improper functioning of hearing aids

Each public agency shall ensure that the hearing aid is being used by deaf and hard of hearing children in school are functioning properly.

(29 U.S.C. 1412(3)(B).)
area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

(a) Each public agency shall take steps to provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped children an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the public agency and assistance in obtaining employment.

(28 U.S.C. 1412(1)(a); 1414(a)(1)(C)).

§ 121a.307 Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to each handicapped child receiving a free appropriate public education.

(b) Special physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to nonhandicapped children unless:

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's individualized education program.

(c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for the services to be provided through other public or private programs.

(d) Education in separate facilities. The public agency responsible for the education of a handicapped child who is enrolled in a separate facility shall ensure that the agency receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(28 U.S.C. 1411(b); 1413(b); 1414(a)(6))).

Comment. The Report of the House of Representatives on P.L. 94-143 includes the following statement regarding physical education:

Special education as set forth in the Committee bill includes instruction in physical education, which is provided as a matter of course to all nonhandicapped children enrolled in public elementary and secondary schools. The Committee is concerned that although these services are available to and required of all children in our school systems, they are often viewed as a luxury for handicapped children.

The Committee expects the Commissioner of Education to take whatever action is necessary to assure that physical education services are available to all handicapped children, and that specially designed physical education be included as an integral part of the educational program of every handicapped child.

(28 U.S.C. 1412(a); Senate Report No. 94-146, p. 9 (1975)).

§ 121a.330 Definitions of "first priority children" and "second priority children.

For the purposes of §§ 121a.221-121a.334, the term:

(a) "First priority children" means handicapped children who:

(1) Are in an area for which the State must make available free appropriate public education under § 121a.300; and

(2) Are not receiving any education.

(b) "Second priority children" means handicapped children, within each disability, with the more severe handicaps who are receiving an inadequate education.

(28 U.S.C. 1412(a)).

Comment. After September 1, 1978, there should be no second priority children, since handicapped children already receiving Part B funds for school year 1977-78 will have been offered a free appropriate public education by that date.

Note. The term "free appropriate public education," as defined in § 121a.4 of Subpart A, means special education and related services without * * * * are provided to a student with an individualized education program * * * *.

Support for priority children will continue to be offered by the States after September 1, 1978, through on-going efforts to identify, locate, and evaluate all handicapped children.

§ 121a.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraphs (a) of this section do not apply to funds which the State uses for administration under § 121a.320.

(20 U.S.C. 1411(b)(1)(B), (b)(2)(B); 1414(c)(1)(B), (c)(3)(A) (U)).

(c) State and local educational agencies may not use funds under Part B of the Act for preschool services.

(20 U.S.C. 1412(a)-(3); Senate Report No. 94-146, p. 36 (1975)).

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds except the portion used (or State administration) for the priorities. A State may have to set aside a portion of its Part B allocation to be able to serve heavily-identified first priority children.

(1) To continue supporting child identification, location, and evaluation activities;

(2) To provide free appropriate public education to newly identified first priority children;

(3) To meet the full educational opportunities goal required under §§ 121a.304, including employing additional personnel and providing inservice training, in order to increase the level, intensity and quality of services provided to individual handicapped children;

(4) To meet the other requirements of Part B.


(a) In school year 1977-1978, if a major component of a first priority child's educational, educational, or other support services in school year 1977-78 only if all of its first priority children have been identified and evaluated and if the public agency responsible for the child's education shall:

(1) Provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1979.

(b) A local educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all of its first priority children have been identified and evaluated and if the public agency responsible for the child's education shall:

(1) To provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1979.

(c) A State educational agency may use Part B funds for training or other support services in school year 1977-1978 only if all first priority children in the State have been identified and evaluated and if the public agency responsible for the child's education shall:

(1) To provide an interim program of services for the child; and

(2) Develop an individualized education program for full implementation no later than September 1, 1979.

(28 U.S.C. 1411(b) (B)).

Comment. This provision is intended to make it clear that a State or local educational agency may not only place a priority on serving the most severely handicapped child but also make special efforts to identify children with lesser levels of handicap and to provide services to them as well.

§ 121a.333 Services to other children.

If a State or local educational agency is providing free appropriate public education to all of its first priority children,

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that State or agency may use funds provided under Part B of the Act for second priority children, if it provides assurance satisfactory to the State educational agency in its application (or an amendment to its application): (a) That all first priority children have a right to appropriate public education available to them; (b) That the local educational agency will establish, for the identification, location, and evaluation of handicapped children, as described in its application; and (c) That whatever a first priority child might be evaluated, the local educational agency makes available a free appropriate public education to the child.

(20 U.S.C. 1412 (6)(A), (6)(B), 1616 (6)(A), (6)(B)).

Determinations of Excessive Programs

§ 121a.348 Definitions.


(20 U.S.C. 1412 (7)(V)).

§ 121a.349 Excessive educational agency services.

(a) Public schools. The State educational agency shall ensure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) Private schools and others. The State educational agency shall ensure that all individualized education programs are developed and implemented for each handicapped child who:

(i) Is placed in or referred to a private school or facility by a public agency; or

(ii) Is enrolled in a parochial or other private school and requires special educational services or related services from a public agency.

(20 U.S.C. 1412 (6), 1417 (4)(A)).

Comment: This service applies to all public agencies and includes, but is not limited to, (a) an extension of normal hours and welfare, which provides special education to a handicapped child who is not in a regular school environment, or (b) a special education program, or related services from a public agency.

§ 121a.350 Excessive educational services.

(a) Agreement. This service applies to all public agencies and includes, but is not limited to, (a) an extension of normal hours and welfare, which provides special education to a handicapped child who is not in a regular school environment, or (b) a special education program, or related services from a public agency.

(b) Excessive. If an individualized education program is developed for the child, the child must be evaluated to determine if the child is in need of services as defined by § 121a.348. If the child meets the criteria of § 121a.348, the educational agency shall notify the child's parents and make arrangements for a meeting to determine if the child is in need of special education services as defined by § 121a.348. If the child does not meet the criteria of § 121a.348, the educational agency shall not be required to provide special education services to the child.

Comment: The purpose of this requirement is to ensure that all children who meet the criteria of § 121a.348 are provided with special education services as defined by § 121a.348. If the child does not meet the criteria of § 121a.348, the educational agency shall not be required to provide special education services to the child.

§ 121a.346 Excessive educational services.

(a) Agreement. This service applies to all public agencies and includes, but is not limited to, (a) an extension of normal hours and welfare, which provides special education to a handicapped child who is not in a regular school environment, or (b) a special education program, or related services from a public agency.

(b) Excessive. If an individualized education program is developed for the child, the child must be evaluated to determine if the child is in need of services as defined by § 121a.348. If the child meets the criteria of § 121a.348, the educational agency shall notify the child's parents and make arrangements for a meeting to determine if the child is in need of special education services as defined by § 121a.348. If the child does not meet the criteria of § 121a.348, the educational agency shall not be required to provide special education services to the child.

Comment: The purpose of this requirement is to ensure that all children who meet the criteria of § 121a.348 are provided with special education services as defined by § 121a.348. If the child does not meet the criteria of § 121a.348, the educational agency shall not be required to provide special education services to the child.
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The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other means to insure participation by the private school or facility, including individual or conference telephone calls.

The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

The agency shall ensure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other means to insure participation by the private school or facility, including individual or conference telephone calls.

The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other means to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(2) The agency shall insure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other means to insure participation by the private school or facility, including individual or conference telephone calls.

(3) The public agency shall also develop an individualized educational program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.
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"PAPP" is a statutory term which requires

in accordance with an individuals

under section 504, each recipient must pro-

persons are used * * * * * * * * *

PAPP requirement.

121a.561 Nature and location of serv-

The State educational agency may

provision is in accordance with the

must be consistent with the require-

must be scheduled;

purposes of the Act, and that

and for adopting, where appropriate, previ-

of Subpart G for administration, direct

Subpart D.

State shall use the portion of

provided for direct and sup-

S.C. 144 (4).]

121a.571 State matching.

Beginning with the period July 1,

and for each following

must be matched on a pro-

Federal funds. This require-

section 504 (a) (5) (B).

121a.572 Applicability of non-

Beginning with funds appropriated for

and for each following

Act, which prohibits

supplementing with Federal funds, does

are not subject to funds that use State

121a.399 Scope of system.

Each annual program plan must in-

of Subpart A and that

activities sufficient to carry out this

121a.381 Purification of other a-

The State educational agency must

State and private institutions of higher

and other agencies.

121a.382 Inservice training.

As used in this section, "inservice

in a full-time program which tends to a

121a.353 Inservice training.

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121a-054 Placement of children by parents.
(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this part to pay for the child's education at the private school or facility. However, the public agency shall make services available to the child as provided under § 121a-400-121a-403.

(b) Disagreements between a parent and a public agency regarding the availability of, and the child's need for, special education and related services, and the public agency's failure to meet the educational needs of the child, and the question of financial responsibility, are subject to the due process procedures under §§ 121a-400-121a-414 of Subpart E.

121a-055 Handicapped Children in Private Schools Not Assisted or Referred by Public Agencies

(a) As used in §§ 121a-451-121a-460, "private school handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a-400-121a-414.

(b) The State educational agency shall ensure that each local agency shall:

(1) Maintain records of the number of handicapped children enrolled in private schools or facilities other than those covered under §§ 121a-400-121a-414; and

(2) Certify each year to the Department of Education the number of handicapped children enrolled in private schools and facilities.

121a-056 Local educational agency responsibility.

(a) Each local educational agency shall provide the following services to each private school or facility where handicapped children are located:

(1) In accordance with the requirements of §§ 121a-451-121a-414, the local educational agency shall:

(a) Make an effort to work with the private school and the parents of the handicapped child to determine the nature of the handicapped child's needs and the type of services and the level of services required to meet those needs;

(b) Assist the private school in identifying and referring handicapped children;

(c) Support the private school in assessing the needs of the handicapped children;

(d) Assist the private school in developing an educational program for the handicapped child;

(e) Assist the private school in securing all necessary services for the handicapped child;

(f) Assist the private school in making available to the handicapped child a free appropriate public education;

(g) Assist the private school in ensuring the handicapped child's right to a free appropriate public education;

(h) Assist the private school in ensuring the handicapped child's right to a free appropriate public education.

(b) Each private agency shall:

(1) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(c) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(d) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(e) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(f) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(g) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(h) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(i) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(j) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(k) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(l) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(m) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(n) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(o) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(p) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(q) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(r) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(s) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(t) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(u) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(v) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(w) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(x) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(y) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.

(z) To the extent consistent with their number and location in the State, provide services to private schools or facilities other than those covered under §§ 121a-400-121a-414.
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children, on a basis comparable to that used in providing for the participation under this act of handicapped children enrolled in public schools.
(20 U.S.C. 1413(e)(4) (A)).
§ 121a-654 Service arrangements.

Services to serve school handicapped children may be provided through such arrangements as dual enrollments, educational radio and television, and other provision of nonpublic educational services and equipment.
(20 U.S.C. 1414(a)(4) (A)).
§ 121a-654 Service arrangements.

Services to serve school handicapped children may be provided through such arrangements as dual enrollments, educational radio and television, and other provision of nonpublic educational services and equipment.
(20 U.S.C. 1414(a)(4) (A)).
§ 121a-655 Prohibition of segregation.

Programs or projects carried out in public facilities and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.
(20 U.S.C. 1414(a)(4) (A)).
§ 121a-655 Prohibition of segregation.

Programs or projects carried out in public facilities and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.
(20 U.S.C. 1414(a)(4) (A)).
§ 121a-656 OPPORTUNITY TO EXAMINE RECORDS.

The parents of a handicapped child shall be afforded, in accordance with the procedures in § 121a-562 through §121a-564, an opportunity to inspect and review all education records with respect to:
(a) The identification, evaluation, and educational placement of the child; and
(b) The provision of a free appropriate public education to the child.
(20 U.S.C. 1414(d)(1) (A)).
§ 121a-656 OPPORTUNITY TO EXAMINE RECORDS.

The parents of a handicapped child shall be afforded, in accordance with the procedures in § 121a-562 through §121a-564, an opportunity to inspect and review all education records with respect to:
(a) The identification, evaluation, and educational placement of the child; and
(b) The provision of a free appropriate public education to the child.
(20 U.S.C. 1414(d)(1) (A)).
§ 121a-657 EQUIPMENT.

(a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, less the title to and administrative control over all equipment must be retained and exercised by a public agency.
(b) In exercising administrative control, the public agency shall be served records of and accounts for the equipment, and shall assure that the equipment is used solely for the purposes of the program, or project, and removes the equipment from the public school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.
(20 U.S.C. 1413(e)(4) (A)).
§ 121a-657 EQUIPMENT.

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(b) In exercising administrative control, the public agency shall be served records of and accounts for the equipment, and shall assure that the equipment is used solely for the purposes of the program, or project, and removes the equipment from the public school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.
(20 U.S.C. 1413(e)(4) (A)).
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121a.504 Prior notice; parent consent.

(a) Notice. Written notice which meets the requirements under §121a.504 must be given to the parents of a handicapped child a reasonable time before the public agency:
(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or
(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) Consent. (1) Parental consent must be obtained before:
(1) Conducting a preplacement evaluation; and
(2) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for preplacement evaluation, initial placement, and inst, may not be required as a condition of any benefit to the parent or child.

(c) Procedures where parent refuses consent.
(1) Where State law requires parental consent before a handicapped child is evaluated or initially provided special education and related services, State procedure governs the public agency in overriding a parent’s refusal to consent.

(2) Where there is no State law requiring consent before a handicapped child is evaluated or initially provided special education and related services, the public agency may use the hearing procedures in 121a.504.10 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(3) If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the child without the parent’s consent, subject to the parent’s right under §121a.510-121a.512.

20 U.S.C. 1414(b)(1) (C), (D).

Comment: Any changes in a child’s special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the preinstructional education program requirements in Subpart C.

Paragraph (c) means that where state law requires parental consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent to any of these services, the public agency may use the preplacement process set forth in this section to determine if the child may be evaluated or initially provided special education and related services without parental consent. The agency must notify the parent of its action, and the parent has appeal rights as well as rights to the hearing.

§121a.505 Content of notice.
(1) The notice under §121a.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;
(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;
(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and
(4) A description of any other factors which are relevant to the agency’s proposal or refusal.

(2) The notice must be: (1) Written in language understandable to the general public, and
(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(3) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the person in his or her native language or other mode of communication;
(2) That the parent understands the content of the notice, and
(3) That there is written evidence that the requirements in paragraphs (c) (1) and (2) of this section have been met.

20 U.S.C. 1414(b)(1)(D)

§121a.506 Impartial due process hearing.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in 121a.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area.

(1) The parent requests the information; or
(2) The parent or the agency initiates a hearing under this section.


Comment: Many States have attempted to conduct mediation as an inter- venung step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of a child. The laws of all States, and the provisions of a free appropriate public education to those children, have been constructed by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of adversarial relationships and with minimal emotional stress. However, mediation may not be used to deny or delay a parent’s right to a hearing.

§121a.507 Impartial hearing officer.

(a) A hearing may not be conducted by:
(1) A person who is an employee of a public agency which is involved in the education or care of the child, or
(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the matter.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not disqualified solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.


§121a.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;
(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses; and
(3) Protest the introduction of any evidence at the hearing that has not been disclosed to that party in writing at least five days before the hearing.

(b) Obtain a written or electronic verbatim record of the hearing.

(c) Obtain written findings of fact and conclusions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F.

(d) Parties involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and
(2) Open the hearing to the public.


§121a.509 Hearing decision: appeal.

A decision made in a hearing conducted under this subpart is final, unless
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§ 121a.510 Administrator appeal; implied review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) In case of an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Ensure that the procedures at the hearing were consistent with the requirements of this part;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 121a.508 apply;

(4) Afford the parties an opportunity for oral or written argument or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and the decision to the parties.

(c) The decision made by the reviewing official is final, unless a party brings a civil action under § 121a.512.

§ 121a.511 Child's name during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

§ 121a.512 Surrogate parents.

(a) General. Each public agency shall ensure that the rights of a child are protected when a child is a ward of the State under the laws of that State.

(b) Duties of public agencies. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate parent for the child. This must include a method: (1) For determining whether the child needs a surrogate parent, and (2) For assigning a surrogate parent to the child.

(c) Criteria for selection of surrogates.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents;

(ii) Has knowledge and skills that enable adequate representation of the child;

(iii) Non-employee; and

(iv) A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

(d) A person who otherwise qualifies to be a surrogate parent under paragraphs (a) and (b) of this section, is not an employee of the agency solely because he or she is hired by the agency to serve as a surrogate parent.

(e) Responsibilities. The surrogate parent may represent the child in all matters relating to:

(1) The identification, evaluation, and educational placement of the child, and

(2) The provision of a free appropriate public education to the child.

§ 121a.515 Protection in Evaluation Procedures.

(a) Each State educational agency shall develop and implement procedures which meet the requirements of §§ 121a-339, 121a-340, and 121a-374.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

§ 121a.516 Procedural safeguards.

(a) General. Each public agency shall ensure, as a minimum, that:

(1) Tests and other evaluation materials are provided and administered in the child’s native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used;

(3) Are administered by trained personnel in conformance with the instructions provided by the test publisher;

(4) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(5) Tests are selected and administered so as to ensure that a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child’s aptitude or achievement level or whatever other factors may be pertinent in measuring, rather than reflecting the child’s impaired sensory, manual, or speaking skills (except where those
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121a.556 Reservations.

Each State and local educational agency shall reserve:
(a) That each handicapped child's individualized education program requires
(b) That the evaluation of the child's educational program for the identification of
(c) That a handicapped child is entitled to
(d) That the placement of each handicapped child's individualized education

121a.557 Placement Procedures.

(a) Each State educational agency shall ensure that each public agency
(b) That an evaluation of the child's educational program is conducted every three years
(c) That evaluation results shall be maintained.

121a.558 Continuation of alternative placements.

(a) Each public agency shall ensure that a continuation of alternative placements is available to meet the needs of handicapped children for special education and related services.

121a.559 Nonacademic settings.

In providing or arranging for the provision of services and activities, each public agency shall ensure that the handicapped child participates in activities of the school and that the placement of each child in nonacademic settings is consistent with the results of the most recent evaluations and placements.

121a.558a Placement.

Each public agency shall ensure that:
(a) Each handicapped child's educational program is developed and implemented in accordance with § 121a.556.
(b) The evaluation of the child's educational program is conducted every three years or more frequently if circumstances warrant.
(c) The child's parents or teacher requests an evaluation.

121a.558b Placement.

Each public agency shall ensure that:
(a) Each handicapped child's individualized education program requires services that are appropriate for the child.
(b) The child's educational program is evaluated at least annually.
(c) The child's educational program is reviewed at least annually.
(d) The child's educational program is reviewed at least annually.
(e) The child's educational program is reviewed at least annually.

The evaluation of the child's educational program may be the same evaluation used for the identification of the child or may be a separate evaluation.

121a.558c Placement.

Each public agency shall ensure that:
(a) Each handicapped child's individualized education program is developed and implemented in accordance with § 121a.556.
(b) The evaluation of the child's educational program is conducted every three years or more frequently if circumstances warrant.
(c) The child's parents or teacher requests an evaluation.

121a.558d Placement.

Each public agency shall ensure that:
(a) Each handicapped child's individualized education program requires services that are appropriate for the child.
(b) The child's educational program is evaluated at least annually.
(c) The child's educational program is reviewed at least annually.
(d) The child's educational program is reviewed at least annually.
(e) The child's educational program is reviewed at least annually.

The evaluation of the child's educational program may be the same evaluation used for the identification of the child or may be a separate evaluation.

121a.558e Placement.

Each public agency shall ensure that:
(a) Each handicapped child's individualized education program is developed and implemented in accordance with § 121a.556.
(b) The evaluation of the child's educational program is conducted every three years or more frequently if circumstances warrant.
(c) The child's parents or teacher requests an evaluation.
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§ 121a-554 Notice to parents.

(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under §121a.559 of Subpart B, including:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;

(2) A description of the children on whom personally identifiable information is maintained, the types of information maintained, the methods the State tends to use in gathering the information (including the sources from which information is gathered), and the use to be made of the information;

(3) A description of all the rights of parents and children regarding their personal information, including the rights under section 638 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations);

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

§ 121a-555 List of types and locations of information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used under this part.

§ 121a-556 Fees.

(a) A participating agency may charge a fee for the cost of copying or reproducing education records which are made for parents under this part if the fees do not effectively prevent the parents from accessing their child's records.

§ 121a-567 Amendment of records at parent's request.

(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the educational or other rights of the child, may request the participating agency which maintains the information to amend the information.

(b) The school shall decide whether to amend the information.

§ 121a-557 Opportunity for a hearing.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading,
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or otherwise in violation of the privacy or other rights of the child.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.459 Request of hearing.
(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.
(b) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the intent to place on the records it maintains on the child a statement commenting on the information or section forth any reasons for disagreeing with the decision of the agency.
(c) Any explanation placed in the records of the child under this section must:
(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency and
(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.458 Hearing procedures.
A hearing shall be held under § 121A.446 of this subpart if a party requests a hearing under § 121A.457 of this subpart.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.457 Consent.
(a) Parental consens must be obtained before personally identifiable information is:
(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraphs (a) of this section, or
(2) Used for any purpose other than meeting a requirements under this part.
(b) An educational agency or institution subject to Part 36 of this title may not release information from education records to participating agencies without the consent of the parent, as authorized to do under Part 36 of this title.
(c) The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded notice of privacy rights under this act and types of disclosure that may be made.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.577 Safeguards.
(a) Each participating agency shall develop policies and procedures for ensuring the confidentiality of any personally identifiable information.
(b) The agency shall disclose personally identifiable information only to those persons or agencies who are authorized by law to receive such information and which needs to receive such information in order to fulfill its statutory or legal responsibilities.
(c) All persons collecting or using personal identifiable information shall be required to retain or otherwise safeguard such information so as to protect against unauthorized disclosure or destruction.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.576 Office of Education.
If the Office of Education is authorized to conduct an audit of any participating agency, it may request access to the records of any participating agency for the purpose of making such audit.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.575 Enforcement.
The State educational agency shall be responsible for enforcing the regulations of this title and any contract entered into under this act.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.574 Children's rights.
The State educational agency shall include policies and procedures in its annual program plan regarding the extent to which children are afforded notice of privacy rights under this act.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.573 Hearing procedures.
(a) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity to present the following:
(1) The name(s) of the persons to be considered as experts, if any, and the nature of the information to be presented.
(b) An opportunity to present testimonial evidence of disputed facts, if any.
(c) An opportunity to present testimonial evidence of disputed facts, if any.
(d) An opportunity to present testimonial evidence of disputed facts, if any.
(e) An opportunity to present testimonial evidence of disputed facts, if any.
(f) An opportunity to present testimonial evidence of disputed facts, if any.
(g) An opportunity to present testimonial evidence of disputed facts, if any.
(h) An opportunity to present testimonial evidence of disputed facts, if any.
(i) An opportunity to present testimonial evidence of disputed facts, if any.
(j) An opportunity to present testimonial evidence of disputed facts, if any.
(k) An opportunity to present testimonial evidence of disputed facts, if any.
(l) An opportunity to present testimonial evidence of disputed facts, if any.
(m) An opportunity to present testimonial evidence of disputed facts, if any.
(n) An opportunity to present testimonial evidence of disputed facts, if any.
(o) An opportunity to present testimonial evidence of disputed facts, if any.
(p) An opportunity to present testimonial evidence of disputed facts, if any.
(q) An opportunity to present testimonial evidence of disputed facts, if any.
(r) An opportunity to present testimonial evidence of disputed facts, if any.
(s) An opportunity to present testimonial evidence of disputed facts, if any.
(t) An opportunity to present testimonial evidence of disputed facts, if any.
(u) An opportunity to present testimonial evidence of disputed facts, if any.
(v) An opportunity to present testimonial evidence of disputed facts, if any.
(w) An opportunity to present testimonial evidence of disputed facts, if any.
(x) An opportunity to present testimonial evidence of disputed facts, if any.
(y) An opportunity to present testimonial evidence of disputed facts, if any.
(z) An opportunity to present testimonial evidence of disputed facts, if any.
(A) An opportunity to present testimonial evidence of disputed facts, if any.
(B) An opportunity to present testimonial evidence of disputed facts, if any.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.565 Hearing panel.
The Commissioner appoints a Hearing Panel consisting of not less than three persons and may appoint any hearing under § 121A.330 of this subpart.
(20 U.S.C. 1412(e) (5)(C))
§ 121A.563 Hearing procedures.
(a) If the Hearing Panel determines that oral testimony would not materially assist the resolution of disputed facts, the Panel shall give each party an opportunity to present the following:
(1) The name(s) of the persons to be considered as experts, if any, and the nature of the information to be presented.
(b) An opportunity to present testimonial evidence of disputed facts, if any.
(c) An opportunity to present testimonial evidence of disputed facts, if any.
(d) An opportunity to present testimonial evidence of disputed facts, if any.
(e) An opportunity to present testimonial evidence of disputed facts, if any.
(f) An opportunity to present testimonial evidence of disputed facts, if any.
(g) An opportunity to present testimonial evidence of disputed facts, if any.
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(t) An opportunity to present testimonial evidence of disputed facts, if any.
(u) An opportunity to present testimonial evidence of disputed facts, if any.
(v) An opportunity to present testimonial evidence of disputed facts, if any.
(w) An opportunity to present testimonial evidence of disputed facts, if any.
(x) An opportunity to present testimonial evidence of disputed facts, if any.
(y) An opportunity to present testimonial evidence of disputed facts, if any.
(z) An opportunity to present testimonial evidence of disputed facts, if any.
(A) An opportunity to present testimonial evidence of disputed facts, if any.
party has an opportunity to submit written comments on the proposed decision to the Commissioner within a specified reasonable time.

(c) The initial decision of the Hearing Panel is the final decision of the Commissioner, unless written comments are received by the Commissioner within 30 days after the date of the receipt of written comments, the Commissioner forms a Panel in writing that the decision is being reviewed.

(d) Review by Commissioner is based on the decision, the written record, if any, of the Hearing Panel's proceedings, written comments or oral arguments by the parties.

(e) No decision under this section becomes effective until it is served on the State educational agency or its attorney.

(20 U.S.C. 1233e(a); 1412(b); 1412(d); 1416(b)).

§ 121A.389 Waiver of requirement regarding representation and supplementing with Part B funds.

(a) Under sections 611(a)(9)(B) and 616(a)(2)(B)(ii) of the Act, State and local educational agencies must ensure that Federal funds provided under Part B of the Act are used to supplement the level of State and local funds expended for the education of handicapped children, and are used to supplement these State and local funds, beginning with funds appropriated for fiscal year 1976, and for each following fiscal year, the nonsupplementing requirement is to remain in effect as in effect upon more recent, or supplementary, local educational agencies. (See § 121A-372)

(b) If the State provides clear and convincing evidence that all handicapped children have available to them a free appropriate public education, the Commissioner may waive in part the requirement under § 121A.389 of supplementing Federal funds to the extent that the Commissioner concurs with the evidence provided by the State.

(c) If a State wishes to request a waiver, it must inform the Commissioner in writing. The Commissioner will provide the State with a finance and membership report form which provides the basis for the request.

(d) The request for a waiver will be considered a petition for the waiver, and the Commissioner will inform the State of the results of the special study made by the State in order to provide evidence of the adequacy of a free appropriate public education to all handicapped children. The special study must indicate, by a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for locating, identifying, and evaluating handicapped children;

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions; and

(3) The adequacy of the State's due process procedures.

(e) In its request for a waiver, the State shall include finance data relating to the availability of a free appropriate public education to all handicapped children, including:

(1) The total current expenditures for regular educational programs and special education programs by function and by source of funds (State, local, and Federal) for the previous school year.

(2) The full-time equivalent membership of students enrolled in regular programs and special programs in the previous school year.

(3) The Commissioner may request or obtain through on-site reviews of the State's educational programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(f) If the State requests a hearing under §§ 121A.389-121A.383 with regard to any final action by the Commissioner under this section.

(20 U.S.C. 1412(a)(5); 1412(a)(9)(B)).

§ 121A.390 Withholding payments.

(a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under §§ 121A.385-121A.383 to the State educational agency involved, and to any local educational agency affected by any failure described in paragraph (a) or (b) of this section:

(1) That there has been a failure to comply substantially with the provisions of sections 611 and 613 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application of a local educational agency approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) of this section, the Commissioner:

(1) Shall, after notifying the State educational agency, withhold any further payments to the State under this part and

(2) May, after notifying the State educational agency, withhold further payments to the State under the Federal programs referred to in § 121A.128 of Subpart B which are within its jurisdiction, to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children.

(c) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or portions of programs under the annual program plan, or portions of it, affected by the failure, or

(2) That the State educational agency must make further payments under Part B of the Act to specified local educational agencies affected by the failure.

(20 U.S.C. 1416(a)).

§ 121A.391 Reinstating payments.

Until the Commissioner is satisfied that there is no longer any failure to comply with the provisions of this part, as specified in § 121A.380(a).

(a) No further payments shall be made to the State under this part or under the Federal programs specified in section 611(a)(2) of the Act which are within his jurisdiction to the extent that funds under those programs are available for the provision of assistance for the education of handicapped children or

(b) Payments by the State educational agency under this part shall be limited to local educational agencies whose actions did not cause or were not involved in the failure.

(20 U.S.C. 1416(a)).

§ 121A.392 Public notice by State and local educational agencies.

Any State educational agency and local educational agency which receives a notice under § 121A.390(a) shall make a public notice, take any necessary steps to inform the public within the agency's jurisdiction of the pendancy of the action.

(20 U.S.C. 1416(a)).

§ 121A.393 Judicial review of Commissioner's final action on annual program plan.

If any State is dissatisfied with the Commissioner's final action with respect to the annual program plan submitted by the State under Subpart B, the State may under section 618(b) of the Act, within sixty days after notice of the action, file a petition for review of that action with the United States Court of Appeals for the circuit in which the State is located.

(20 U.S.C. 1416(b)).

Subpart F—State Administration

State Educational Agency Responsibilities; General

§ 121A.400 Responsibility for all educational programs.

(a) The State educational agency is responsible for ensuring that:

(1) That the requirements of this part are carried out; and

(2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency.

(b) The State must comply with paragraphs (a) of this section through State statutes, State regulations, signed agreements between respective agency officials, or other documents.

(20 U.S.C. 1416(b)).

Comment. The requirement in § 121A.400 is based on current provisions from me...
tion (§121.602 of this chapter and reflect the desires of the Congress for a central point of responsibility and accountability in the education of handicapped children within each State. With respect to State educational agencies, the Senate Report on P.L. 94-142 includes the following statement:

This provision is included specifically to assure a single line of responsibility with respect to the education of handicapped children and to assure that in the implementation of all provisions of this Act and in carrying out the rights in section 1412, the State educational agency shall be the responsible agency ... Without this requirement, there is an abdication of responsibility for the education of handicapped children. Presently, in many States, responsibility is divided, depending upon the age of the handicapped child, sometimes on the basis of the services provided. While the Congress understands that different groups need in fact, different services, the responsibility must remain in a central agency overseeing the education of handicapped children, in that failure to deliver services or the perception of the rights of handicapped children is squarely the responsibility of one agency. Senate Report No. 94-142, p. 26 (1975).

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(a) State agreements are developed between respective State agencies concerning State educational agency standards and monitoring. The agreements are binding on the local or regional components of each agency.

(b) The Governor's Office issues an administrative directive establishing the State educational agency responsibility.

(c) The State office of the Governor determines the State educational agency as responsible for establishing monitoring for all educational programs under Part B and includes responsibility for monitoring.

(d) State law mandates that the State educational agency is responsible for educational programs under Part B.

§ 121.604 Monitoring and evaluation activities.

Each State educational agency shall:

(a) Establish mechanisms for monitoring and evaluation activities to ensure compliance of all public agencies within the State with the requirements of Subpart C, §§111.33 and 111.6.

(b) Develop procedures including specific timelines for monitoring and evaluating public agencies involved in the education of handicapped children. These procedures must include:

(1) Collection of data and reports;

(2) Conduct of on-site visits;

(3) Audit of Federal fund utilization; and

(4) Preparation of a sampling of individualized education programs with the programs actually provided.

(c) Conduct, in carrying out the requirements of paragraph (b) of this section, State educational agency staff includes additional personnel, such as monitoring personnel or handicapped persons who are involved in on-site visits and other monitoring activities.

§ 121.602 Adequacy of complaint procedures.

(a) Each State educational agency shall adopt effective procedures for reviewing and investigating complaints on any alleged failure of a public agency or of any individual responsible for the education of handicapped children to comply with this part or §111.625 or any regulations thereunder.

(b) The State agency shall consider the following:

(1) Written complaint procedures;

(2) A statement of the State educational agency's policies on receipt and handling of complaints;

(3) A statement of the State educational agency's grievance procedures;

(4) A statement of the State educational agency's procedures for mediation or conciliation of complaints.

§ 121.605 Federal funds for State administration.

A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is less, for administrative costs related to carrying out sections 612 and 613 of the Act. However, this amount cannot exceed the amount which the State may use under §§121.608 or 121.609 for any fiscal year. The amount may be used under:

(1) State educational agency, or

(2) Federal Government agency or

(b) School or local educational agency.

§ 121.606 Allowable costs.

(a) The State educational agency may use funds under §121.605 of this Subpart for:

(1) Administration of the annual program plan setting strategies for the educational planning of handicapped students;

(2) Approval, supervision, monitoring, and evaluation of the effectiveness of local programs and projects for the education of handicapped children;

(3) Technical assistance to local educational agencies with respect to the requirements of this part;

(4) Leadership services for the program supervision and management of special educational services for handicapped children;

(5) Other leadership services for handicapped children;

(6) Special services for handicapped children; and

(7) Other State adminstration functions.

§ 121.607 Special education advisory panel.

(a) Each State educational agency shall establish, in accordance with the provisions of this section, a State advisory panel on the education of handicapped children.
RULES AND REGULATIONS

State regarding the education of handicapped children and the procedures for distribution of funds under this part; and

(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.

(20 U.S.C. § 1412(a) (12)).

§ 121a.633 Advisory panel procedures.

(a) The advisory panel shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory panel shall submit an annual report of panel activities and suggestions to the State educational agency. This report must be made available to the public in a manner consistent with other public reporting requirements under this part.

(c) Official minutes must be kept on all panel meetings and shall be made available to the public on request.

(d) All advisory panel meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(e) Interpreters and other necessary services must be provided at panel meetings for panel members or participants. The State may pay for these services from funds under § 121a.220.

(20 U.S.C. § 1412(a) (13)).

Subpart G—Allocation of Funds:

§ 121a.700 Specific definition of the term "State.

For the purposes of §§ 121a.701, 121a.702, and 121a.704-121a.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(20 U.S.C. § 1412(a) (14)).

§ 121a.701 State entitlement: formula.

(a) The maximum amount of the grant to which a State is entitled under section 611 of the Act in any fiscal year is equal to the amount for handicapped children aged three through five in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the average per pupil expenditure in public elementary and secondary schools in the United States.

(b) For the purposes of the formula in paragraph (a) of this section, the applicable percentage of the average per pupil expenditure in public elementary and secondary schools in the United States for fiscal year 1976 is:

1. 1976–3 percent.
2. 1976–10 percent.

5. 1982, and for each fiscal year after 1982, 50 percent.

(20 U.S.C. § 1411(a) (1)).

(2) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States for the second fiscal year preceding the fiscal year for which the computation is made or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available, of all local educational agencies in the United States (which, for the purpose of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.

(20 U.S.C. § 1411(a) (6)).

§ 121a.702 Limitations and exclusions.

(a) In determining the amount of a grant under § 121a.701 of this subpart, the Commissioner may not count:

1. Handicapped children in a State to the extent that the number of those children is greater than 13 percent of the number of all children aged five through 17 in the State, and

2. Children with specific learning disabilities to the extent that the number of those children is greater than two percent of the number of all children aged five through 17 in the State, and


(b) For the purposes of paragraphs (a) and (b) of this section, the number of children aged five through 17 in any State shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(20 U.S.C. § 1411(a) (8)).

§ 121a.703 Eligible reductions.

(a) General. If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.

(20 U.S.C. § 1411(a) (9)).

(b) Reporting data for local educational agencies and entitlements.

1. In any fiscal year in which the State entitlements have been ratably reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraphs (a) and (b) of this section, the State educational agency shall fix dates before which it estimates it will expend.

2. The amounts available under paragraphs (a) and (b) of this section, or any amount which would be available to any other local educational agency if it were to submit an application meeting the requirements of this part, which the State educational agency determines will exceed and be able to use additional funds to carry out approved programs.

(20 U.S.C. § 1411(a) (10)).

§ 121a.704 Hold harmless provision.

No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.

(20 U.S.C. § 1411(a) (11)).

§ 121a.705 Within-State distribution:

(a) Fiscal year 1978.

Of the funds received under § 121a.701 of this subpart, the Commissioner may not use the State in accordance with the provisions of 121a.820 of Subpart P and § 121a.373 of Subpart C.

(b) Fiscal year 1979.

...
eduction. If a State or local educational agency is responsible for serving these children and does provide them special education and related services, they may be counted.

§ 121a.73. Annual report of children served by the State educational agency.

In addition to meeting the other requirements in this section, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services, they may be counted.

(b) Set dates by which those agencies and institutions must report to the State educational agency in order for the State to comply with § 121a.750(a).

(c) Obtain certification from each agency and institution that an uncontrolled and accurate count has been made.

(d) Aggregate the data from the counts described above from each agency and institution, and prepare the reports required under this subsection;

(e) Ensure that documentation is maintained which enables the State and the courts to audit the accuracy of the counts.

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APPROPRIATION OF REGULATIONS TO STATE LOCAL AND PRIVATE AGENCIES (§ 121a.133)

Comments: A commenter felt that the regulations reporting the requirements which he had no concern over were not clear, and should be revised to indicate which ones apply to any public agency serving handicapped children. The Department interprets the regulations to mean that any public agency which serves handicapped children is required to submit the regulations. The regulations are divided into two parts: (1) the requirements for the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship. The regulations that apply to the Federal-State relationship are divided into two subsections: (1) the regulations that apply to the Federal-State relationship and (2) the regulations that apply to the Federal-State relationship.
RULES AND REGULATIONS

referring to the qualifications of the various positions.

The definition of "handicapped children" has been modified to mean certain persons with physical or mental disabilities. Although some com-

mittees requested additional changes in the definition of the terms "disability" and "handicapped," it is felt that the definitions in this regula-
tion remain close enough to current usage in the States and professions.

The regulations have been expanded to include "social health services." In addition, changes were made in the def-
nition of the limitations for the issuance of "related services" (e.g., psychological, educational services, and recreation) to conform to rec-
ommendations of professional associations.

APPENDIX B--STATE AGRICULTURAL PROGRAM PLANS AND LOCAL APPLICATIONS

Subpart B includes the requirements relating to State annual program plans, local educational agency applications, participa-
tion by the Bureau of Indian Affairs, and public participation.

Two new sections (sections 419.138 and 419.138A) were added to the regulations. The new sections describe the procedures that the program will be operated in compliance with the section 306 regulations, including the requirements under section 901 of the Education of the Handicapped Act regarding employment or qualification of handicapped individuals in programs assisted under the Act. The Office for Civil Rights has been designated authority for enforcing section 504.

A number of commenters were concerned with the following major issues in the rules: (1) the amount of data required of State and local educational agencies; (2) the length of time required to complete the annual program plan; and (3) the public participation requirement. In ad-
novation, as with other subparts, many commenters objected to statutory requirements and the length of time required to prepare the plans and regulations.

APPENDIX C--DEMOGRAPHIC COVERAGE OF HANDICAPPED CHILDREN

Section 434(b) of the General Education Provisions Act (GEPA), as amended by Pub. L. No. 94-142, requires the Secretary of HEW to determine, for each Office of Education program under which funds are provided to local educational agencies, the extent to which each such program is meeting the needs of mentally retarded children. The regulations set forth the procedures for making such determinations (6 CFR 100b, Subpart B). The Secretary must be given an annual program plan of the State and local programs that take the place of a State plan for Part B (6 CFR 100b).

The five assurances required under section 434(b) of the GEPA cover proper administration, fiscal control and accounting, re-

duption, reprogramming, and distribution of the annual program plan. Where Part B contains provisions that must be followed to ensure compliance with the regulations, the regulations do not have to be submitted as part of the annual plan. The Part B plan provisions which do not have to be submitted in the annual program plan are set forth in 6 CFR 100b.15(c)(3)(15)(iv). Note that a sub-

stantive section on the noncompliance re-

The regulations for the noncompliance re-

quirements of the Federal and local educational agencies are set out in 6 CFR 100b.15(c)(3)(15)(iv). Material may be incorporated by reference in an annual pro-

gram plan if the material is in a permanent

form that remains unchanged and current and the regulations are available and are current. The regulations are available and current as of July 30, 1977, and the material will be updated annually.

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Section R. The requirement for local educational agencies to be consistent with the annual progress plan is not set forth in section 121A.339.

Appeal from noncompliance with Part B of Act. Although the State educational agency may appeal a determination that the child is in need of special education or related services, an appeal is not available when the determination is based on the State educational agency's failure to consult with the parents and the child's prior educational program, as set forth in section 121A.339.

Public Participation. See the comments on Sections 121A.150.

Support C—Services

Support C. The requirements governing the major service components required under Part B of the Act include (1) appropriate public education, (2) the educational opportunity guarantee in the use of Part B funds, (3) the implementation of educational programs, (4) the provision of educational services, and (5) the provision of educational services to children with disabilities.

Part A: APPROPRIATE PUBLIC EDUCATION

Public participation.
RULES AND REGULATIONS

PRIORITIES (§ 112A.321)

Comment: Many commenters were concerned that first priority eligibilities must be used for insurance training for patients who can serve these students, and listed that such insurance training activities may be an essential component toward achieving the first priority.

Response: The proposed rules have been rewritten as proposed in order to address the above concerns. A new section was added to make it clear that an agency may use Part B funds for insurance training concurrently with placing a first priority child in school. In an urban program, if a component of the child's program is missing, however, the provision of insurance training may not be used as a pre-condition for services to the child.

The intent of Congress with respect to the education of first priority children is being given new weight as proposed in this section and Part B. 380 and very clear, as reflected in the following statements:

1. (The Congress has a responsibility to the child of the future to ensure equal opportunity for handicapped children. For handicapped children, this means very different things. "These funds must be focused in such a way that we are assured that handicapped children are provided their rights to education."

2. (Congressional Record—Senate, June 18, 1977, p. 31064)

3. "First priority for spending under the legislation is to provide services for handicapped children who are not now being served" (in a Senate approach in the Conference Report with respect to the current fiscal year, fiscal year 1977 and fiscal year 1978 will allow for consideration of this."


4. "There are millions of children with handicapped conditions who are receiving no services at all. And since we must have a place to start, it is appropriate that we give priority to those who are receiving no services at all."

5. (Congressional Record—Sen. June 18, 1976, p. S10961)

Comment: Several commenters requested clarification regarding whether the requirement on the use of funds for priorities applies within or among local educational agencies, or if it applies to the state or the local agency as a whole. The agency or local agency is made in the following section in which the parent and the agency shall participate in the regular program. Another section is concerned with the special needs of the handicapped child who is not receiving special services in the regular program.

Response: The change does not permit the State to take away a local educational agency's Part B funds. However, the local educational agency is serving all the first priority children. For the limited circumstances where a local educational agency's funds may be reallocated, see section 112A.795.

Other changes: Proposed additions to section 112A.204 (fundamental principle of use of property has been deleted. Requirement of the Use of Part B Funds

As part of the priorities on free appropriate public education, the law requires each State and local educational agency to establish priorities. First with respect to handicapped children not receiving an education (defined as "first priority children") in the regulations, and second with respect to handicapped chil- dren, within each disability, with the severe handicap who are receiving an inadequate education (defined as "second priority children") in the regulations. The local educational agency is not required to use its full entitlement under part B. "In accordance with the regulations which implement this priority requirement, these priorities are included in section 112A.320-112A.204.

Comment: Many commenters were concerned that the new regulations do not permit the State to take away a local educational agency's Part B funds. However, the local educational agency is serving all the first priority children. For the limited circumstances where a local educational agency's funds may be reallocated, see section 112A.795.

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very costly and could essentially defeat the purpose of insuring access. Open parent involvement is required.

While it is necessary to insure that all direct services personnel who work with handicapped children are informed about and involved in implementing the child's IEP, this does not mean that they should attend the IEP meetings. The mechanisms for implementing the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or parent or supervisor or reviewer) and appropriate to the situation.

Hence, we have developed a flexible procedure which can be handled outside of the context of the IEP meeting itself.

The same does not require all IEP meetings to be attended by all implementers. In fact, the definition of IEP in section 1322.19 [of the 1979-80 Handbook] which authorizes the attendance of 'other specialists, supervisors or parent' is not limited to those who are directly involved in the implementation of the IEP. The term 'person' is used in a broad sense and includes the child, the child's teacher, or parent or supervisor or reviewer.

There are some who believe that it is important to hold the IEP in open meeting. There are some who believe that it is important to hold the IEP in open meeting.

Conclusions: The comments have not been uniformly received. Those who believe that it is important to hold the IEP in open meetings are received. The IEP process will vary in some cases from the process that is used in some cases. The process that is used in some cases is more dependent on the situation. The IEP process will vary in some cases from the process that is used in some cases. The process that is used in some cases is more dependent on the situation.

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RULES AND REGULATIONS

The direct services provisions of this subpart include sections on (1) use of local educational agency (LEA) funds, (2) nature and location of services, (3) use of State's ESEA's entitlement, and (4) State matching requirements.

The section on the use of LEA allocations (section 111A.350) has been redrafted to contain the proposed paragraphs (a) and (b) in a single paragraph. This paragraph sets out the conditions under which an LEA may use an LEA's entitlement.

A new paragraph (c) has been added, which requires that an LEA shall not provide services that the agency is not authorized to provide. The section on the use of LEA funds (section 111A.360) has been redrafted to contain the proposed paragraphs (a), (b), and (c).

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only in institutions of higher education with State approved programs.

On the other extreme there were suggestions that the section "contains unnecessary requirements" and "Federal rules should not obey any task is accomplished" and "(o)seas provides adequate training and service and does not need more regulation and regulations.

Comment: The emerse clearly requires inservice education as a central part of the comprehensive plan of personnel development and it is appropriate for the rule to detail the nature and extent of the inservice education that is required. This has been accomplished through the outlining of procedures which define inservice education, its parameters, and relationship to required activities. Examples of the rules do not define specific measures of the training needs identified. These have been designed to outline the foundation for an adequate program of inservice education, without ruling the creativity of State and local personnel in their efforts to plan and implement such a system.

Comment: One commenter suggested that the purpose of the "measure as a minimum of higher education" be inserted in section 121A.321(1)(a)

Responder: No change has been made. However, implementation of instructions of higher education is required under 121A.321(1).

Comment: A number of commenters suggested the addition of special competencies and proficiency standards to this section, constituting an increased need of personnel to be trained or involved in the review of training needs.

Responder: No change has been made. The State's plan must include all personnel who now perform these tasks.

Comment: Several commenters suggested wording changes designed to clarify the task of the proposed rule on inservice training.

Responder: Changes were made where necessary to define the regulations into common use.

Comment: There was no suggestion concerning the financial arrangements for inservice training procedures.

Responder: Commented that the rule indicates that persons engaged in inservice training may contract with other than profit organizations and institutions of higher education to carry out personnel of interest. These persons have suggested incentives for teachers participation, including released time and college credits that are required or provided during contract time, not involving service.

Responder: No substantive changes have been made. The comments and above comments are authorized under these regulations.

REPORT DEVELOPMENT PLAN (121A.321)

Comment: Several commenters asked for special attention to physical education and service delivery models which take into account programs of rural families.

Responder: No changes have been made. Specialized needs in physical education and the rural setting should be addressed as appropriate in the report and plan.

Comment: One commenter objected to listing inservice training under this section.

Responder: No change has been made. The term "inservice education" is included in the Act. However, since the Act clearly requires that a "minimum of higher education" be developed, such a system must include the consideration of preservice training.

Note: The data required in sections 121A.326 and (121A.329) of Subpart B on the numbers of handicapped children and the time and number of personnel needed will serve as the uniform data base within the State for the personnel development system under 121A.326 of this section. The data may also be used by Institutions of higher education and other non-profit educational training agencies in submitting personnel planning applications under Part D of the regulations under 121A.329, which are presented as follows:

- 121A.326 State personnel needs.

Each application shall include (a) a statement by the State educational agency of how the proposed program relates to the goals and objectives of the State's personnel needs; (b) a description of the numbers of personnel needed for the purposes of Part D of the Act.

(11 U.S.C. 1431, 1435, 1436)

Comment: One commenter suggested that "teachers organizations" be specified as representative of the State.

Responder: No change has been made. Teachers organizations are included under the term "other interested agencies and organizations.

SUBPART D - SCHOOL BOARD

The proposed rule created a certain amount of confusion among commenters in distinguishing between handicapped children in the State or local education agencies and handicapped children whose parents choose to educate them in private schools. This has been amended to give the proposed program relates to those stated needs, and (b) a description of the ways in which the recipient's program plan and objectives relate to the purposes of Part D of the Act.

(11 U.S.C. 1431, 1435, 1436)

Comment: Two commenters suggested that no change be made for intrastate references to private schools and communication among these agencies.

Responder: No change has been made in the regulations. Instructions in this section are to be handled under existing procedures. These agencies are authorized to meet all requirements for availability of the State educational agency unless otherwise specified in the regulations. These agencies to be required to prevent the advancement by which the States arrange to provide services.

IMPLEMENTATION BY THE (121A.329)

Comment: A commenter suggested that the State educational agency can be a development of private schools, dissemination of standards, and development of State educational agencies, rather than the State educational agency doing it directly. Commented that the State educational agency is not required to develop all standards for private schools, but the State educational agency is given more authority to disseminate that information and to cooperate with the requirements under Part B. While the State educational agency is required to be involved in the development, the States educational agency would have to be done directly by the State educational agency. The States educational agency cannot be done by the agency itself. Dissemination of standards could be done in a variety of ways. Involvement in development of State standards would be required by the State educational agency if it is the agency that develops those standards.

PLENARY REPORTER CIVILIAN IN (121A.330)

Comment: Commenters were concerned with the effect of this section on the right of handicapped children in private schools and felt that the section was worded in such a manner that limited those rights.

Responder: The section has been revised to state that a group of private citizens who are interested in the program (PAPPS) must be available to

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of an individualized education program in the placement procedures.

The following additional comments were

made regarding evaluation procedures:

Comment: Several commenters felt that

the regulations should require State and

local educational agencies to develop

procedures for the selection of evaluations. They

would make it possible to determine the ade-

quacy of the evaluations and to assure uni-

formity in these procedures.

Response: A paragraph was added to sec-

tion 313.240 (General) which requires the State

educational agency to assure that each public

agency establishes and implements evaluation

placement procedures.

Comment: Several commenters felt that

unqualified people should not be set for implemen-

ting the evaluation process (e.g., for initial refer-

ral to evaluation and placement).

Response: No change has been made. The

Office of Education has indicated to impose

very few absolute deadlines in the regula-

tions for this part, because of the potential

administrative and legal problems they can

cause. Imposing deadlines can actually delay

the decision process (as is done in the

timetable sections) so that the time periods are

regarded as both unrealistic and unnecessary

for implementing a procedure.

A child should be evaluated as soon as

possible following referral. Any undue delay in

providing the evaluation would raise the

question of whether the State and local

educational agency are in compliance with sections 313.108 and

313.209 (identification and eligibility of all handicapped children).

Several commenters requested commentaries reporting whether a revas-

ualization or resolution of the area is possible, which is

been deemed not to be possible by the agency. If the parents and

agency agree that the child should be trans-

ferred from a special education program to a full time
temporary residence placement.

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The specific section has been
described in the Federal Register. However

certain changes in the child's placement (including

a change from a regular class to a

ful time temporary residence placement)

will now be made via a meeting held to review

the child's individualized education program in

conformance with the requirements under

sections 313.194 (b) and 313.209 (identification and

placement procedures orientation for sections 313.194

and 313.209). The regulations are covered under sections 313.194.

Laser Resonant Environment

Section 313.168 (b) of the Act requires States to

establish and implement procedures to assure that "no

use of the maximum extent ap-

propriate to a child whose condition is

severely handicapped because he or she will be

be evaluated with nonhandicapped children unless

the child is evaluated as a handicapped child. The

child will be evaluated as a handicapped child if he or she

is evaluated with nonhandicapped children unless

is a handicapped child and the child is

known to have a handicapped condition.

Comment: A number of commenters re-

quired that procedures be made for special

support for the regular classroom for the

child who is evaluated with nonhandicapped children. (e.g.,

individualized education program, behavior rate and

assigning seats to the room).

Response: No change was made. Since the

statute already authorizes the use of supple-
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(21)(C). Agencies may of course adopt policies of making copies available free of charge and are encouraged to do so.


Response: The section states that the procedures under 198.22(1) the hearing procedures in the regulations for the Family Educational Rights and Privacy Act shall be used. Section 99.25(1) states the hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(18)(B). Comments: A commenter requested that "advanced students," persons acting as practioner services," and records be given access to records without consent.

Response: No change has been made. The Family Educational Rights and Privacy Act specifically lists parties and conditions under which records may be released without parental consent.

(18)(C). Comments: A commenter requested a list of positions rather than a list of names of employees who may have access to personally identifiable information.

Response: The requirement has been modified to require a list of names and positions to more fully inform parents and the public of individuals who have access to data as well as the specific individuals who may have access.

INFORMATION OF INFORMATIONS (18)(D).

(18)(E). Comments: A number of commenters were concerned about the use of personal social security numbers in the regulations. The principle concern was that data related to Social Security numbers should not be released to individuals who are not authorized to show proof of need for further services from other agencies. One commenter claimed that Social Security numbers of a child should be notified of the existence of the records at the time of graduation and informed that they would be destroyed only upon request of the parent or child. Another commenter suggested that records be maintained, but that parents be given the option to have them destroyed.

Response: The requirement has been revised to permit the parents to request that the information be destroyed and to require that Social Security numbers be removed from the list of identifiers that may be released under the Family Educational Rights and Privacy Act. The notice would normally be given at the same time documents are released to the agency. The purpose of the destruction option is to ensure that nonconsensual records are released only to persons who are authorized to receive such records, which may possibly by stagmatizing. These commenters stated that Social Security numbers are the best protection against improper or unauthorized disclosures. However, the handicapped child or his or her parents may need certain records for other purposes (such as proof of eligibility for benefits).

Comment: Commenters asked that notice be given to a child who has reached the age of majority.

Response: No change has been made. Section 111.37(1) requires the State educational agency to have policies and procedures regarding children's privacy. These educational records are maintained by an agency covered under the Family Educational Rights and Privacy Act, these rights must include transfer of the rights of parents to the child when he or she reaches age 18 or the post-secondary education level.

Other Changes: The regulations have been revised to make it clear that the records covered under this Act are the same as the type of records covered under the Family Educational Rights and Privacy Act. Confidentiality in coverage is necessary to avoid undue administrative burdens on public agencies covered by both laws.

OFFICE OF EDUCATION PROCEDURES

General: The requirements in these sections largely represent the statute. Perhaps for this reason, few comments were received on the Office of Education procedures.

WAVES OR REPEALS OF INSTRUMENTS MAY BE FORMED OR REPEALS OF INSTRUMENTS MAY BE FORMED WITH A BEND AT THE END OF EACH INSTRUMENT.

(18)(F). Comments: A commenter asked for definitions of "substantial compliance" and "fail to comply." Commenters also urge that the Office of Education, the Office for Civil Rights, and the Department of Education officials apply the same criteria.

Response: No change has been made.

Comment: The Office of Education has determined that the terms have to be defined on a case-by-case basis.

Response: The Office of Education and the Office for Civil Rights will coordinate and cooperate in enforcing requirements under the Part and Part B (the regulations for sections 504 of the Rehabilitation Act of 1973) where identical requirements are involved. The Office of Education will make every effort to ensure that medical officials understand and apply any criteria used by program officials.

RECESS P-SCHOOL ADMINISTRATION

This subpart has been amended with requirements set out under the major headings of State Education Agency Responsibilities, Title VI, and State Aid Advisory Panel.

STATE EDUCATIONAL AGENCY RESPONSIBILITIES

Provisions on State educational agency responsibilities have been added (and relocated from proposed section 111.26(1) to better summarize general administrative and supervisory responsibility. Proposed sections 111.26(1) and other sections of the Act. A section on compliance procedures, which was included in previous regulations for Part B (prior section 111.14), and inadvertently not included in the proposed regulations has been added.

Comment: Commenters requested addition of a new section on State educational agency responsibilities for monitoring evaluation, and enforcement activities to insure compliance throughout the State with the requirements of this part. The commenters made specific suggestions for implementing such a section, including collection of data, collection on the state audit, audit of fund utilization, comparison of written individualized education programs with programs actually provided to parents and parent groups, publication hearings, development of deplorable criteria for evaluating program quality and effectiveness, and detailed procedures for enforcing requirements against noncomplying agencies.

Response: A new section has been added to require each State educational agency to develop procedures and specific timelines for monitoring and evaluating public agencies involved in the education of handicapped children. Thus, there are minimal requirements. Adoption of the other suggestions made by the commenters is encouraged but not required.

ALLOWABLE COSTS (18)(G).

Comment: A number of commenters requested clarification on the use of administrative funds to raise and that provisions be added to allow local educational agencies to use funds for administrative costs.

Response: No change has been made on the State limit as it is a statutory limitation.

Comment: Commenters requested that the regulations restrict each State educational agency to use its funds for specific purposes. One recommendation was that the use of administrative funds be limited to persons in local communities to assist and enable parents to come together with the students of the State's programs for handicapped children.

WITNESSES PRETEND (18)(H).

Comment: Commenters asked for definitions of "substantial compliance" and "fail to comply." Commenters also urge that the Office of Education, the Office for Civil Rights, and the Department of Education officials apply the same criteria.

Response: No change has been made. The Office of Education does not believe it is appropriate to discuss in detail to States how to use their limited administrative funds.

STATE AGENCY PANELS

STATE AGENCY PANELS

Comment: One commenter recommended that local panels be required.

Response: No change has been made. The statute only requires a State advisory panel. A State may, of course, decide to establish local panels.

MEASUREMENTS (18)(I).

Comment: A substantial number of comments were received regarding the use of representatives to be included on the panel, including professional groups, legal advocacy groups, and representatives of State and local agencies. Some commenters suggested that handicapped individuals or their parents make up specific percentages of the panel.

Response: A provision has been added to specify that it is clear that a State may expand the advisory panel to include additional persons in the procedure panels, and representatives of other groups. The Office of Education, however, does not believe it is appropriate to prescribe specific percentages, so that the States should have some discretion to select the proper mix of representatives. A comment has been added to indicate that States may consider determining balanced membership of the panel.

ADVANTAGE FUNCTIONS AND ADVISORY PANELS

STATE AGENCY PANELS

Comment: Commenters recommended that the regulations indicate that the panel must meet annually to discuss the annual program plan. The annual program plan is an extremely important document and this addition makes clear that the annual panel must be involved in reviewing it. The other recommendations pertaining to panels will be considered but not once the Federal government believed that panel reAuthorized at this time.
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COMMENTS: Commenters requested that the regulations prohibit the requirement that parents prepare for the possibility of being told in a meeting that their child has been identified as handicapped or for being told that their child has been found to be eligible for services. The regulations in their current form do not require such preparation. The regulations, however, do require that a parent be informed of the results of a test or evaluation at the meeting and be provided at that time with the information that is to be shared with the parents. The regulations also require that the parents be provided with the names of the professionals who conducted the test or evaluation and the qualifications of those professionals. The regulations further require that the parents be informed of the plans for further evaluations or for providing services to the child.

WHO MAY BE COVERED

Comment: Commenters disagreed as to whether handicapped children should be covered if the educational agency is unable to afford special education from private sources or if private sources offer a special education program which is not available from the Federal Funds. Some commenters felt that only public-located special education should be covered while others argued that since all children have a right to a free appropriate education, the child's parents should be notified.

AMOUNT OF INFORMATION SERVICES

These regulations require that the services provided to handicapped children be those which are reasonably calculated to provide beneficial education for the handicapped child. The amount of information services provided to handicapped children should be limited to those which are reasonably calculated to be of benefit to the handicapped child. If a handicapped child is not receiving benefit from these services, the services should be suspended until such time as the handicapped child is receiving benefit from these services.

ASSOCIATIONS

An annual program plan which is submitted to the State educational agency by the local educational agency should include a statement as to whether the association is providing services to handicapped children. The statement should include the type and amount of services provided to handicapped children and the number of handicapped children being served.

APPROVAL OF ASSOCIATION

The regulations require that the State educational agency approve the annual program plan submitted by the association. The approval of the annual program plan should be based on the following criteria:

1. The annual program plan should be submitted by the association no later than the end of each academic year.

2. The annual program plan should include a statement as to whether the association is providing services to handicapped children, the type and amount of services provided to handicapped children, and the number of handicapped children being served.

3. The annual program plan should be reviewed by the State educational agency and the Office of Education to determine if the services provided to handicapped children are being provided in accordance with the regulations.

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SCHOOL DISTRICTS

1215.21

RULING ON APPEAL

A school district shall rule on an appeal filed pursuant to § 1215.21 within
45 days of the date the appeal is filed.

1215.22

REVIEW OF DECISION

The decision on an appeal made under § 1215.21 may be reviewed by the
Secretary of the State Education Agency.

1215.23

PROCEDURE FOR AN APPEAL

The procedure for an appeal under § 1215.21 shall be as follows:

1. The party filing the appeal shall submit a written statement of the
reasons for the appeal.

2. The party filing the appeal shall also submit any documents or evidence
that support the appeal.

3. The party filing the appeal shall serve a copy of the written statement
and any documents or evidence on the school district.

4. The school district shall prepare a written response to the appeal.

5. The school district shall also submit any documents or evidence
that support the response.

6. The school district shall serve a copy of the written response and any
documents or evidence on the party filing the appeal.

7. The Secretary of the State Education Agency shall review the written
statements, documents, and evidence submitted by both parties.

8. The Secretary shall rule on the appeal within 45 days of the receipt of
the written statements, documents, and evidence.

1215.24

APPEAL PROCESS REVIEW

The Secretary of the State Education Agency shall review the appeal process
annually to ensure that it is effective and meets the needs of the parties involved.

1215.25

APPEAL PROCESS IMPROVEMENT

The Secretary of the State Education Agency may, at any time, make
recommendations for improving the appeal process.
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SPECIAL EDUCATION

See: Free Appropriate Public Education. Individualized Education Program. Defined—121a.16.

STATE APPRAISAL PANEL

Annual program plan requirements—121a.147.

General requirements—121a.860-121a.863.

In state plans: state assessment requirements—121a.332.

General requirements—121a.330-121a.372.

SUPPLIANCES

Applicability to State educational agency—121a.372.

Local application requirements—121a.330.

Waver of requirements—121a.380.

STUDENT PARENTS

Definition of parent—121a.10.

Responsibilities—121a.316.

Definitions—121a.314.

TESTS

See: Evaluation.

TIME LIMITS AND TERMINALS

Annual program plan effective period—121a.14.

Evaluation of educational programs—121a.16.

Free appropriate public education—121a.150.

Part B applicability to private schools—121a.3.

Physical education—121a.307.

PROCEDURAL REQUIREMENTS


Annual program plan requirements—121a.151, 121a.150.

Local application requirements—121a.207.

FUTURE PARTICIPATION

See: Hearings.

Annual program plan requirements—121a.177.

Complaints—121a.181.

Local application requirements—121a.206.

Secretary of Interior application—121a.301.

State advisory council—121a.690-121a.694.

STATE AGENCY

See: Confidentiality of information. Annual program plan requirements—121a.142.

Comparable services—121a.251.

Count of children served—121a.754.

Fiscal requirements—121a.690.

Individualized education programs—121a.130.

Local application requirements—121a.332.

Parents may examine—121a.503.

Parents not participating in examinations—121a.348.

RELATE SERVICES

See: Free Appropriate Public Education. Individualized Education Program. Defined—121a.11.

REPORTS

Annual report of children served—121a.750-121a.754.

Local application requirements—121a.232.

State survey panel—121a.685.

§ 121m—INCENTIVE GRANTS

See.


2. General provisions, regulations.

3. Eligibility.


5. Amounts of grants.

6. Participation by children not counted under Part B of this act.

7. Excess costs.

8. Administration.


§ 121m.1 Scope: purpose.

(a) This part applies to assistance under section 619 of the Act.

(b) The Commissioner awards a grant to each State which provides special educational and related services to handicapped children ages three, four, or five.

(c) The State shall use funds provided under this part to give special education and related services to handicapped children in the age groups named in paragraph (b) of this section.

(d) The terms "special education" and "related services" have the meanings defined in 121a.12 and 121a.15 of this chapter.

§ 121m.2 General provisions, regulations.

Assistance under this part is subject to the requirements in Parts 100, 106b, 106c, and 121 of this chapter; including definitions and fiscal, administrative, programmatic, and other matters.

§ 121m.3 Eligibility.

A State is eligible to receive a grant if:

(a) The Commissioner has approved its annual program plan under Part 121a of this chapter; and

(b) The State provides special education and related services to any handicapped children ages three, four, or five.

§ 121m.4 Application.

To receive funds under this part, a State must submit an application to the Commissioner through its State educational agency.

§ 121m.5 Application contents.

An application must include the following material:

(a) A description of the State's goals and objectives for meeting the educational needs of handicapped children ages three through five. These goals and objectives must be consistent with the State's full educational opportunity goal under § 121a.123 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient...
detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amount of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefitted indirectly. If children are to be benefitted indirectly, there must be a rationale that demonstrates the benefit.

(e) The number of local educational agencies or intermediate educational units, and the number and names of other agencies which will provide contractual services under the grant, the activities they will carry out, and the reason for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the extent to which the activities met the objectives described under paragraph (b) of this section.

30 U.S.C. 1414(a)(1)

§ 121m.6 Amounts of grants.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 121a.78-121a.784 of this chapter.

(b) If appropriated funds are less than enough to pay in full the grants under this part, the amount of each grant is ratably reduced.

30 U.S.C. 1414(a)(4)

§ 121m.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 121a.78-121a.784 of this chapter if the State educational agency ensures that these children have all of the rights afforded under part 121a of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

30 U.S.C. 1414(c)

Comment: In carrying out the provisions of this part, each activity must be carried out in a manner particularly appropriate for the use of these funds: (1) Providing services with staff development information; (2) assessing parents in the understanding of the special needs of their handicapped child; (3) providing parents counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) preventing general ignorance and noncompliance; (5) preventing rehospitalization essential to the delivery of services; (6) providing speech therapy, occupational therapy, or physical therapy.

30 U.S.C. 1414(c)

§ 121m.8 Election means.

(a) If local or State funds are available to pay for the education of non-handicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

30 U.S.C. 1414(a)(2)

§ 121m.9 Administration.

(a) The State educational agency shall administer the funds provided under this part.

(b) The State educational agency may use the funds itself, or may contract with local educational agencies, intermediate educational units, or other agencies.

30 U.S.C. 1414(a)

§ 121m.10 Annual evaluation report.

(a) Within 90 days after the end of the grant period, the State educational agency shall submit a report to the Commissioner on the activities carried out under this part during that period.

(b) The report must contain:

(1) The results of the evaluation under § 121m.5(g), and

(2) In brief narrative form, the impact that these funds had on the State's educational services to handicapped children ages three, four, and five.

30 U.S.C. 1414(c)

[FR Doc. 77-30462 Filed 8-29-77; 8:46 am]
APPENDIX C

A MODEL SCHOOL DISCIPLINE CODE


A joint committee comprised of representatives from the American Association of University Professors, U.S. National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and National Association of Women Deans and Counselors have drafted a Joint Statement on Rights and Freedoms of Students. This statement prescribes the following standards of providing students with procedural due process.

PROCEDURAL STANDARDS IN DISCIPLINARY PROCEEDINGS

* * *

The administration of discipline should guarantee procedural fairness to an accused student. Practices in disciplinary cases may vary in formality with the gravity of the offense and the sanctions which may be applied. They should also take into account the presence or absence of an honor code, and the degree to which the institutional officials have direct acquaintance with student life in general and with the involved student and the circumstances of the case in particular. The jurisdictions of faculty or student judicial bodies, the disciplinary procedures, including the student's right to appeal a decision, should be clearly formulated and communicated in advance. Minor penalties may be assessed informally under prescribed procedures.

In all situations, procedural fair play requires that the student be informed of the nature of the charges against him, that he be given a fair opportunity to refute them, that the institution not be arbitrary in its actions, and that there be provision for appeal of a decision. The following are recommended as proper safeguards in such proceedings when there are no honor codes offering comparable guarantees.

A. Standards of Conduct Expected of Students

The institution has an obligation to clarify those standards of behavior which it considers essential to its educational mission and
its community life. These general behavioral expectations and the resultant specific regulations should represent a reasonable regulation of student conduct, but the student should be as free as possible from imposed limitations that have no direct relevance to his education. Offenses should be as clearly defined as possible and interpreted in a manner consistent with the aforementioned principles of relevancy and reasonableness. Disciplinary proceedings should be instituted only for violations of standards of conduct formulated with significant student participation and published in advance through such means as a student handbook or a generally available body of institutional regulations.

B. Investigation of Student Conduct

1. Except under extreme emergency circumstances, premises occupied by students and the personal possessions of students should not be searched unless appropriate authorization has been obtained. For premises such as residence halls controlled by the institution, an appropriate and responsible authority should be designated to whom application should be made before a search is conducted. The application should specify the reasons for the search and the objects or information sought. The student should be present, if possible, during the search. For premises not controlled by the institution, the ordinary requirements for lawful search should be followed.

2. Students detected or arrested in the course of serious violations of institutional regulations, or infractions of ordinary law, should be informed of their rights. No form of harassment should be used by institutional representatives to coerce admissions of guilt or information about conduct of other suspected persons.

C. Status of Student Pending Final Action

Pending action on the charges, the status of a student should not be altered, or his right to be present on the campus and to attend classes suspended, except for reasons relating to his physical or emotional safety and well-being, or for reasons relating to the safety and well-being of students, faculty, or university property.

D. Hearing Committee Procedures

When the misconduct may result in serious penalties and if the student questions the fairness of disciplinary action taken against him, he should be granted, on request, the privilege of a hearing before a regularly constituted hearing committee. The following suggested hearing committee procedures satisfy the requirements of procedural due process in situations requiring a high degree of formality.
1. The hearing committee should include faculty members or students, or, if regularly included or requested by the accused, both faculty and student members. No member of the hearing committee who is otherwise interested in the particular case should sit in judgment during the proceeding.

2. The student should be informed, in writing, of the reasons for the proposed disciplinary action with sufficient particularity, and in sufficient time, to insure opportunity to prepare for the hearing.

3. The student appearing before the hearing committee should have the right to be assisted in his defense by an adviser of his choice.

4. The burden of proof should rest upon the officials bringing the charge.

5. The student should be given an opportunity to testify and to present evidence and witnesses. He should have an opportunity to hear and question adverse witnesses. In no case should the committee consider statements against him unless he has been advised of their content and of the name of those who made them, and unless he has been given an opportunity to rebut unfavorable inferences which might otherwise be drawn.

6. All matters upon which the decision may be based must be introduced into evidence at the proceeding before the hearing committee. The decision should be based solely upon such matters. Improperly acquired evidence should not be admitted.

7. In the absence of a transcript, there should be both a digest and a verbatim record, such as a tape recording, of the hearing.

8. The decision of the hearing committee should be final, subject only to the student's right of appeal to the president or ultimately to the governing board of the institution.
APPENDIX D
APPENDIX D

MEMORANDUM OF UNDERSTANDING BETWEEN
the Department of Public Aid
Department of Mental Health/Developmental Disabilities,
Bureau of the Budget, Department of Children and Family Services,
Department of Public Health, Illinois State Board of Education,
Department of Rehabilitation Services, and the Governor's Office
AUGUST 26-27, 1980

Governor's Purchased Care Review Board

1. The members of the Governor's Purchased Care Review Board agree
to revise Rule 3.21 and Rule 3.31 as attached upon their
approval by the Department of Education at the next regularly
scheduled meeting of the Board.

2. The Governor's Purchased Care Review Board agrees to apply Rule
3.30(b) to the cost included in Rule 3.21(b) to determine what
is a reasonable level for such costs, based on staff analysis
and report.

3. The Governor's Purchased Care Review Board agrees to work for
alterations of state statutes or rules which will define clearly
the differences between educational and non-educational
placements and provide for payment for special education
rendered in non-educational placements.

State Board of Education

1. The State Board of Education agrees that for 1980-81 no new
psychiatric hospitals will be approved and that its rules 8.04.1
will be revised to prohibit new placements in currently approved
facilities. This does not imply that an extended care facility,
group home or other long-term care facility operated by or in
conjunction with a licensed psychiatric hospital could not be
approved as a residential facility.

2. The State Board of Education agrees to change any rules
necessary so that no non-public facility will be eligible to
receive educational placements unless its program is approved by
the State Board of Education and its cost are approved by the
Governor's Purchased Care Review Board and the facility agrees
to charge no more than the Governor's Purchased Care Review
Board costs for any educational placement. It is understood
that the change in rules will lead to a change in the state
approved contract format used for Section 14-7.02 placements.

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3. The State Board of Education may make payment in 1980-81 and as necessary thereafter in order to assure the Office of Special Education that all children now placed in Section 14-7.02 facilities which make charges in excess of the approved costs will receive a free appropriate public education until such time as those children can be placed in facilities which do not charge in excess of the approved costs. In order to do so it will be necessary to do a survey of districts and facilities with children in such placements regarding current parental payments and their purposes and develop a review/payment mechanism for assuring that cost as necessary (i.e., proposed new Rule 3.21A,B,C,) are paid for children with signed contracts so placed, and monitor same.

4. The Superintendent agrees to provide written directives to local education agencies (LEA's) regarding the preparation and content of individual education (IEP's). The rules and regulations of the State Board of Education will be modified to reflect the written directives given to LEA's regarding IEP's. The state Board of Education agree to utilize all existing mechanisms to enforce implementation of present rules and regulations relating to the development of IEP's.

5. The state Board of Education will develop a method of review for IEP's which recommend future placement in non-public residential facilities. This review will assess the appropriateness of the IEP's proposed placement based on the restrictiveness of the environment, the participation of other state agencies that the placement is made solely for educational reasons and other criteria as specified. The rules and regulations of the State Board of Education will be altered to reflect the procedures developed for prior review of IEP's.

6. The State Board of Education will recognize that certain categories of children (ages 3-21) are placed in residential facilities for primarily non-educational reasons. These categories include: 1) children placed for mental health or developmental disabilities purposes in residential mental health facilities pursuant to the Mental Health and Developmental Disabilities Code and the powers and duties of the Department of Mental Health and Developmental Disabilities; 2) children involved in juvenile court proceedings (or in family situations likely to lead to such proceedings) which would lead to the involvement of the Department of Children and Family Services (DCFS); 3) children who have actions pending in juvenile court seeking adjudication for MINS or delinquency or are already adjudicated; 4) persons against whom criminal charges are pending or who have been convicted as adults; 5) status offenders; and 6) children requiring primarily medical care and treatment. When residential placement for a person who is a
member of any of these categories is contemplated, the LEA will invite representatives of the appropriate state agency(s) to attend the multi-disciplinary staffing to provide technical assistance and a preliminary assessment of the eligibility of the student to services of that state agency. The State Board of Education will revise its Rule 9.15 and prepare and implement any other rules and regulations necessary to accomplish this agreement.

**Governor's Office and Other State Agencies**

1. The Governor's Office agrees to provide direction to the directors of appropriate state agencies to participate fully and completely in the multi-disciplinary staffings as requested by the State Board of Education and LEA's to meet agreement #6 above.

2. The Department of Mental Health/Developmental Disabilities assures that responsible relative liability in present cooperative placements between LEA's and Department of Mental Health/Developmental Disabilities is not paid by the parent.

If administrative or regulatory changes are not sufficient to implement this agreement, statutory changes will be sought.

This agreement is made without prejudice to the contentions of the parties to this agreement and its provisions are binding in the light of approval of the plan and release of the funds by the U.S. Department of Education. However, its provisions are subject to recession(sic) unless all proceedings related to Public Law 94-142 and Section 504 initiated against the Governor's Purchased Care Review Board and the Illinois State Board of Education by the Office of Civil Rights are dismissed.

**Date Adopted**

September 17, 1980
APPENDIX E
1981 (JANUARY-JUNE)
LOCAL-LEVEL
DUE PROCESS HEARINGS
TOTAL: 333
APPENDIX E

1981 (JANUARY-JUNE)
LOCAL-LEVEL
DUE PROCESS HEARINGS
TOTAL: 146
### SUMMARY

**Nature of Complaint in Descending Frequency Order**

<table>
<thead>
<tr>
<th>Description</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Placement² (Art. 9)</td>
<td>40</td>
</tr>
<tr>
<td>Appriopriateness</td>
<td>23</td>
</tr>
<tr>
<td>Lack of</td>
<td>56</td>
</tr>
<tr>
<td>Transportation (Art. 13)</td>
<td>16</td>
</tr>
<tr>
<td>Financial responsibility (Art. 8.07 #5)</td>
<td>15</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>12</td>
</tr>
<tr>
<td>Denial of related services (Art. 5)</td>
<td>9</td>
</tr>
<tr>
<td>Failure to comply with administrative order (Art. 10.24)</td>
<td>4</td>
</tr>
<tr>
<td>Expulsion or suspension of special education student (Art. 2.04 #1)</td>
<td>4</td>
</tr>
<tr>
<td>Disagreement with teaching practices</td>
<td>3</td>
</tr>
<tr>
<td>Graduation of special education student (Art. 3.03)</td>
<td>3</td>
</tr>
<tr>
<td>Evaluation (Art. 9)</td>
<td>3</td>
</tr>
<tr>
<td>Due Process (Art. 10)</td>
<td>3</td>
</tr>
<tr>
<td>Parents' Rights (Art. 9)</td>
<td>3</td>
</tr>
<tr>
<td>Accessibility (Section 504 of Rehab. Act)</td>
<td>2</td>
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<tr>
<td>Communication between special education program and parent</td>
<td>2</td>
</tr>
<tr>
<td>Delay in provision of services (Art. 9.24)</td>
<td>2</td>
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</tbody>
</table>

²All citations are from the Rules and Regulations to Govern the Administration and Operation of Special Education.
The dissertation submitted by Nancy Hablutzell has been read and approved by the following committee:

Dr. Samuel T. Mayo, Director
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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

Date: 12/1/82

Director's Signature: [Signature]

Samuel T. Mayo