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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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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 that 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.
CHAPTER II

THE HISTORY OF "DUE PROCESS" IN EDUCATION IN GENERAL

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 statues 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 Constitution, *Sweatt v. Painter* (*Sweatt*, 1950) and *McLaurin v. Oklahoma 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 Sweat, 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.
CHAPI'ER IV

THE LEGISLATIVE RESPONSE: P.L. 93-112, SECTION 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 Mills 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. It 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 comparisons between the two areas of law and their development would be a good subject for a future research study.
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APPENDIX A
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DEFINITION OF TERMS

ARTICLE I

1.01
Case Study:
should be defined as a series of indepth multidisciplinary diagnostic proce-
dures, 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 resi-
dential special schools, home instruction, hospital instruction, and institu-
tional instruction.

1.01c
Counseling Services:
services provided by qualified personnel such as: social workers, psycholo-
gists, 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 character-
istics 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 state-
ment 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 eligibility 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.

1. Such policies shall provide that all information maintained concerning a student receiving special education services be directly related to the provision of services to that child.

2. These policies shall be made known to the parents or guardians of all students receiving special education services, and shall be available to the public.

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 principle 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
      (4) Parent counseling
      (5) Referrals and follow-up
      (6) 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, or indirect as well as direct services.
4. Special reader services, braillists, 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 consultant 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 dis-
trict 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 person-
nel shall communicate at least annually with private or state facility person-
nel 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.
cedures may include coordination with local and state service agencies and
isting parent groups.

en a child is identified through the screening process, or exhibits problems
ich 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
quire special education services, the child shall be referred for a case
udy 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
quired. These procedures shall:

- Designate the steps to be taken in making a referral
- Designate the person to whom a referral shall be made
- 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 appro-
priateness of the referral, deciding what further action should be taken,
and initiating the necessary procedures.

- To determine whether the referred child requires a formal case study
  evaluation, the local school district may conduct preliminary evalu-
  ative 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 con-
  ference with the child.

- 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.

- 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.
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.

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.

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.

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 14-8.01)
(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.
(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 substantially 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.
9.19
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)

9.20
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)

9.21
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.

9.22
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.

9.23
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 service 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.
n. Failure of the local school district to provide an exceptional child with a free appropriate public education.

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:
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 with 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.
11.03 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.

11.04 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.

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

11.06 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.

11.07 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.

11.08 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 a 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

§ 14-7.03 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.

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.
approval of the Director of the Department of Corrections and where other schools and other facilities where particular subject matter or facilities are more suited to or are needed. As complete adult inmates or wards education, Further, the Assistant Director of the Adult Division of the Department of Corrections may authorize an educational furlough for an inmate or ward to attend institutions of higher education, other schools, vocational or technical schools or enroll and attend classes in subjects not available within the School District, to be financed by the inmate or ward or any grant or scholarship which may be available, or applicable therefor, 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 inmate or ward to reside 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 order shall be deemed an escape from the custody of such Department and punishable as provided in Section 17 of "An Act relating to the reformation of Juvenile Delinquents," approved June 30, 1933, as now or hereafter amended, as to the Adult Division inmates, and any 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.

§ 135-17 July 1, 1972.

122 § 13-44.3

Educational fund—Custody—Budget. An educational fund shall be established wherein all moneys received from the Common School Fund, Federal Aid and grants, vocational, educational funds and grants, "P", and the educational 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 costs of the schools and school districts of the Department of Corrections together with and supplemental to regular appropriations to said Department for educational purposes. This shall include any and all cost including, not limited to teacher salaries, supplies and materials, building upkeep and costs, transportation, scholarships, non-academic services, equipment and other school costs.

Beginning in 1972, the Board of Education shall, by November 15, adopt an annual educational fund budget for the School District, in which it deems necessary to delay all necessary expenses and liabilities of the District to be assumed by said fund, and in such a manner that all costs of an inmate and purposes of each item and amount needed for each subject or purpose. The budget shall require 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 the cash, 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 Office of the Superintendent of Public Instruction for incorporation.

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

§ 13-44.4. Permission to leave institution or facility. 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, hospital 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 group of inmates or wards shall be accompanied or not accompanied by security personnel, custodial agent or agent of 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.

§ 13-44.5. Inapplicability of certain provisions of School Code.] § 13-44.5. Other provisions of this Code shall not apply to the Department of Corrections School District being all of the following Articles and Sections: Articles 7, 8, 9, those sections of Articles 10 and 11 of the State Penal Code, all sections of Articles 12 through 40 and Articles 23, 33, 39, 41, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89; and Articles 29 and 51 shall not apply except that this School District may use any funds available from State, Federal and other funds for the purchase of textbooks, apparatus and equipment.

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

ARTICLE 14. HANDICAPPED CHILDREN

Sec. 1. Repealed.

14-1.01. Meaning of terms. Repealed.


14-1.03. Mentally handicapped children. Repealed.


14-1.05. Trai l abol e mentally handicapped children. Repealed.

14-1.06. Speech defective children. Repealed.


14-1.08. Special educational facilities and services. Repealed.

14-1.09. School psychologist. Repealed.


14-1.11. Repealed.

14-1.12. Repealed.


14-1.15. Special educational facilities for handicapped children. Repealed.


14-1.17. Repealed.

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122 § 14-1.08

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 dysfunction, 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, mental retardation, emotional disturbance or environmental disadvantage.

Amended by P.A. 77-1319, § 1, eff. July 1, 1972.

§ 14-1.04 § 14-1.04 Educable mentally handicapped children. "Educable mentally handicapped children" means children between the ages of 3 and 21 years who because of retarded intellectual development as determined by individual psychological evaluation are incapable of being educated profitably and efficiently through ordinary classroom instruction but who may be expected to benefit from special educational facilities designed to make them economically useful and socially adapted.

Amended by P.A. 77-1319, § 1, eff. July 1, 1972.

§ 14-1.05 § 14-1.05. Trainable mentally handicapped children. "Trainable mentally handicapped children" means children between the ages of 3 and 21 years who because of retarded intellectual development as determined by individual psychological evaluation are incapable of being educated profitably and efficiently through ordinary classroom instruction or special educational facilities for educable mentally handicapped children, but who may be expected to benefit from training in a group setting designed to further their physical, social, and economic usefulness in their homes or in a sheltered environment.

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

§ 14-1.06 § 14-1.06 Speech defective children. "Speech defective children" means children between the ages of 3 and 21 years whose diagnosis by a qualified person meeting the requirements of the Superintendent of Public Instruction as a qualified speech correctional indicates that special instruction would improve or correct the defect.

Amended by P.A. 77-1319, § 1, eff. July 1, 1972.

§ 14-1.07 § 14-1.07 Multiply handicapped children. "Multiply handicapped children" means children between 3 and 21 years who may be placed within 2 or more classifications of this Article, or in at least 2 different programs under Section 14-1.02 of this Article. Amended by act approved July 21, 1963. L 1963, p. 1466.

§ 14-1.08 § 14-1.08 Special educational facilities and services. "Special educational facilities and services" includes special schools, special classes, special housing, special instruction, special transportation, medical care, instructional services, hospital and nursing care, professional consultant services, medical services only for diagnostic and evaluation purposes provided by a physician licensed to practice medi-
cine in all its branches to determine a child's need for special education and related services, psychological services, school social worker services, special administrative services, salaries of all required special personnel, and other special educational services, including special equipment for use in the classroom, required by the child because of his disability, if such services or special equipment are approved by the State Board of Education and the child is eligible therefor under this Article and the regulations of the State Board of Education.


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 educational programs of study and standards of scholarship approved by the Superintendent of Public Instruction, who has had at least one school 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 period of permit, the permit. Added by act approved July 21, 1965. L.1965, p. 1484. 14-1.10 | 14-1.10 Professional worker. "Professional worker," "professional worker," "modified professional worker," and "qualified professional worker," shall be limited to speech correctionist, school social worker, school psychologist, psychologist intern, school social worker intern, special administrator intern, registered therapist, professional consultant, special administrator or supervisor giving full time to special education, 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 and who works in such program. Added by act approved July 21, 1965. L.1965, p. 1484. 14-4. | 14-5 | 14-5 Revealed by act approved July 21, 1965. L.1965, p. 1486. 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 term 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 like 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.

The Advisory Committee shall organize with a chairman selected by the Committee members and shall meet in each county during each year to make recommendations 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 every four years thereafter, examine the plan additions to or modifications of their comprehensive plan. 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 cooperate in the preparation of 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 density, geographic factors, or because of other substantial reasons, including the existence of cooperative or joint agreements to serve these counties. At least every 4 years thereafter, such Advisory Committees shall recommend to the State Board of Education such additions or modifications of that regional plan.

In developing and implementing such plans, the 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 practicable.

The State Board of Education shall furnish professional consultant assistance to the Advisory Committees under the general direction of the Committee designated as executive secretary of the Advisory Council and furnish guidelines for the implementation of this Act. Amended by P.A. 80-1406, § 1, eff. Aug. 25, 1978.

14-8. | 14-7 | 14-7 Revised by act approved July 21, 1965. L.1965, p. 1486. 14-3.01 | 14-3.01 Advisory Council. There is hereby created a special education advisory council on special education and handicapped children to consist of 15 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 amendatory Act of 1978 are not affected by this amendatory Act. The membership shall include a handicapped adult, a parent of a handicapped child, 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 500,000 population, a professional affiliated with an institution of higher education, and a member of the general public and the Director of Special Education for the Chicago Board of Education, ex-officio. Of the members appointed after the effective date of this amendatory Act of 1978, the Governor shall appoint one member to an initial term of 2 years, one member to an initial term of 3 years and one
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member to an initial term of 4 years. Vacancies shall be filled in the manner for the unexpired balance of the term.

Because of the responsibility of the Department of Children and Family Services, the Department of Vocational Health and Developmental Disabilities, and the Division of Vocational Rehabilitation for special education programs, the Director of the Department of Children and Family Services and the Director of the Department of Mental Health and Developmental Disabilities and the Director of the Division of Vocational Rehabilitation or their designees shall be members of the Council, ex-officio.

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

The State Board of Education shall seek the advice of the Advisory Council on modifications or additions to county or regional comprehensive plans. Additionally, the Advisory Council shall:

(a) advise the General Assembly, the Governor and the State Board on the urgent needs in the education of handicapped children,
(b) assist the State Board in developing and reporting data and evaluations which may assist the United States Commissioner of Education in the performance of his responsibilities under the Education of the Handicapped Act, and
(c) advise the State Board relative to qualifications for hearing officers and the rules and procedures for hearings conducted under Section 14-6.32 of this Act, and
(d) comment publicly on any rules or regulations proposed by the State regarding the education of handicapped children and the procedures for distribution of funds under this Act.

The Council shall organize with a chairman elected by the Council members and shall meet at the call of the chairman upon 10 days written notice but not less than 4 times a year. The Council shall consider any rule or regulation or plan submitted to it by the State Board of Education within 40 days after its receipt by the chairman. Members of the Council shall serve without compensation, but shall be entitled to reasonable amounts for expenses necessarily incurred in the performance of their duties.

The State Board of Education shall designate an employee to act as executive secretary of the Council and shall furnish all professional and clerical assistance necessary for the performance of its powers and duties.


Section 11-6-01 of this chapter.


14-6.01  § 14-6.01. Special educational facilities for handicapped children. School boards of those districts that maintain a recognized school, whether operating under the general law or under a special chapter, subject to any limitations imposed by the Advisory Council, shall maintain and maintain such special educational facilities as may be needed for handicapped children. The facilities described in Sections 14-1.01 through 14-1.07 of this Article who are residents of their school district, and such children, residents of other school districts as may be authorized by this Article.

All such school boards shall place or by regulation may authorize the director of special educational programs to place pursuant to procedures required by this Act and rules and regulations promulgated by the State Board of Education eligible children into special educational programs designed to benefit handicapped children as described in Sections 14-1.01 through 14-1.07 of this Act.


14-6-01  § 14-6.01. Application of Article. This Article applies to school boards of all types and sizes of school districts, including but not limited to special charter districts, community consolidated school districts, consolidated school districts, high school districts, non-high school districts, community high school districts and districts exceeding 50.000 inhabitants. Added by act approved July 21, 1945.

14-6-01  § 14-6.01. Powers and duties of school boards. School boards of one or more school districts establishing and maintaining any of the educational facilities described in this Article shall, in connection therewith, exercise similar powers and duties as are prescribed by law for the establishment, maintenance and management of other recognized educational facilities. Such school boards shall include only eligible children in the program and shall comply with all the requirements of this Article and all rules and regulations established by the State Board of Education. Such school boards shall accept in part-time attendance only handicapped children of the types described in Sections 14-1.01 through 14-1.07 who are enrolled in nonpublic schools. A request for part-time attendance must be submitted by a parent or guardian of the handicapped child and may be made only to those public school districts in the district where the child attending the nonpublic school resides, however, nothing in this Section shall be construed as prohibiting an agreement between the district where the child resides and another public school district to provide special educational services if such an arrangement is deemed more convenient or economical. Special educational services shall be provided to such students as soon as possible after the identification, evaluation and placement procedures provided in Section 14-6.02 but no later than the beginning of the next school semester following the completion of such procedures. School districts shall provide transportation for handicapped children accepted in part-time attendance on the same basis as those pupils provided transportation under Section 29-4 of The School Code.

Effective July 1, 1946, high school districts are financially responsible for the education of handicapped pupils resident in their districts when such pupils have reached age 16 but may admit handicapped children into special educational facilities without regard to age of handicapped children described in Sections 14-1.01 through 14-1.07 of this Article who are residents of their school districts, but after such pupils have reached the age of 16 years.
§ 14-6.01 \begin{flushright} School Code \textsuperscript{1} (14-41) \end{flushright}

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. 80-1609, § 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 the child resides shall provide any necessary transportation, and 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 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 $200 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 exceeding any State reimbursement for special educational transportation which shall be divided by the average number of pupils in average daily attendance in such special education 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.

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 non-public schools or special educational facilities provide an important service to the educational system in this State. If because of his or her handicap the special education program of 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 Board of Education, the school district in which the child is a resident shall pay the actual cost of maintaining the special educational facility and related services provided during the regular school term and during the summer school term if the child's educational needs so require, excluding room, board and transportation costs charged the child by that non-public school or special educational 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 and from 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 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 designees; the Directors of Children and Family Services, Mental Health and Developmental Disabilities, Public Health, Public Aid and the Bureau of Financial Aid; 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 therein, 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
accompanies the rules and regulations established by it with respect to allowable costs.

The Review Board may employ staff and contract with independent auditors for such services as may be needed to verify that all fees, tuitions, and charges are fair and justified.

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 cost of tuition for special education and related services, including room, board, and transportation costs, exceeds $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 is responsible for an amount in excess of $4,500 equal to the district's per capita tuition charge and shall be entitled to 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.

If 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 districts shall be paid by the State Board of Education at an amount equal to the actual costs incurred, provided that the State's liability for funding such as payments have been subtracted from such costs. If the money appropriated by the General Assembly for such purposes for any year is insufficient, it shall be apportioned on the basis of the claims approved. Each district shall be paid an estimated claim, pro rata, equal to one-half of the estimated reimbursement approved under this section on December 31 and three-fourths of the estimated reimbursement minus the December 31 payment on or before March 20. Each district shall file a final claim with the regional superintendent on or before June 30. The regional superintendent shall transmit such claims to the State Superintendent of Education on or before July 15. The State Superintendent of Education shall determine the accuracy of such claims and make final payment to each district, through the regional superintendent of schools on warrants of the State Comptroller, on September 15. Such current state reimbursement shall be reduced by an amount equal to the proceeds which the child or child's parents are eligible to receive under any private or public insurance or assistance program. Nothing in this section shall be construed as releasing either of the State or the district from any interdepartmental agreement or commitment to provide or to pay for services provided to a handicapped child.

If it otherwise qualifies, a school district is eligible for the transportation reimbursement under this Section for the amount of tuition payments made by a district for tuition of tuition payments under Section 14-102a. If a school district certifies that the non-special education of special education facility, public out-state school or county special education facility attended by a child who resides in that district and requires special educational services, is within or outside of the State of Illinois, however, a district is not eligible to claim transportation reimbursement under this Section unless the district certifies to the State Superintendent of Education that the district is able to provide special educational services required by the child for the current school year.

Nothing in this Section authorizes the reimbursement of a school district for the amount paid for tuition of a child attending a non-public school or special education facility, public out-state school or county special education facility unless the school district certifies to the State Superintendent of Education that the special education facility attended by the child of that district is unable to meet the needs of that child because of his handicap and the State Superintendent of Education finds that the school district is in substantial compliance with Section 14-401.

Any educational or related services provided pursuant to this Section in a non-public school or special education facility not reimbursable under this Section shall be the responsibility of 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.


4-7-02a § 14-7-02a. Children requiring extraordinary special education services and facilities. A child is deemed to require extraordinary special education services and facilities under the following conditions:

1) the child is unable to benefit educationally or emotionally from any program or service under any public or private insurance or assistance program;

2) the district is not able to provide the educational or psychological services necessary for the child's educational development;

3) the district is not able to provide the social services necessary for the child's social development.


14-7-03 § 14-7-03. Special Education Classes for Children from Orphanages, Foster Homes, Residents of Mental Health Facilities. If a school district maintains special education classes for children from orphanages and children's homes, foster family homes, other State agencies, or State residential units for children attending classes for handicapped children in which the school district is participating under a State agency plan, the classes shall be considered to be special education classes for children from orphanages, foster homes, other State agencies, or State residential units for children attending classes for handicapped children.
other State agencies, or State residential units attended classes for the handicapped children maintained by the school district; then reimbursement shall be paid to eligible districts in accordance with the provisions of this Section through the regional superintendent on 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 a member of the classes in the special classes bears to the total average daily membership of the district and any costs for the use of building facilities shall not exceed 10% of the expenditure for the classes, such programs and costs shall be approved by the State Superintendents of Education.

On forms prepared by the State Superintendents of Education, the districts shall certify to the regional superintendent the following:

1. The name of the home or State residential unit with the name of the owner or proprietor and address of these maintaining it;
2. That no service charges or other payments authorized by law were collected in lieu of taxes, thereafter or on account thereof during either of the calendar years included in the school year for which claim is being made;
3. The number of children qualifying under this Act in special education classes for instruction on the site of the orphanages and children's homes;
4. The number of children attending special education classes for handicapped children in which the district is a participating member of a special education joint agreement;
5. The number of children attending special education classes for handicapped children maintained by the district;
6. The computed amount of tuition payment claimed as due and approved by the State Superintendents of Education for maintaining these classes.

If a school district makes a claim for reimbursement under Section 14—7.02 of this Act it shall not include in any claim filed under this Section a claim for such children. Payments authorized by law including State or federal grants for education of children included in this Section shall be deducted in determining the tuition amount.

Nothing in this Act shall be construed so as to prohibit reimbursement for the tuition of children placed in profit facilities. Private facilities shall provide adequate space at the facility for special educational programs approved by a school district or joint agreement for handicapped children who are residents of the facility, the district or joint agreement upon receipt of the school district or joint agreement upon request of the school district or joint agreement. If such a program provides space at no cost to the district or joint agreement for special education classes or programs provided to handicapped children who are residents of the facility, the district, or joint agreement shall not include any costs for the use of such facilities in its claim for reimbursement.

The State Board of Education shall establish such rules and regulations as may be necessary to implement the provisions of this Section.

For the 1977-78 school year and thereafter, each district shall claim reimbursement on a current basis. To make such a claim, the district shall file with the regional superintendent for transmission to the State Superintendent of Education by September 1, December 1 and March 1, respectively, an estimated claim computed in a manner acceptable to the State Superintendent of Education in accordance with this Section, and a final adjustment claim by June 15. Upon receipt of such a quarterly claim, the State Superintendents of Education shall direct the Comptroller to pay a specified amount to the district by the 15th day of September, December or March or the 30th day of June, respectively.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14—7.01 for the 1977-78 school year but for this amendment of Act 1977 shall not be paid unless the district claims to claim such classes for that entire school year.

If a school district's current reimbursement payment for the 1977-78 school year only is less than the prior year's reimbursement payment owed, 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.

Amended by P.A. 80-1096, § 1, eff. Nov. 23, 1977.

14—7.02a § 14—7.02a. Combined reimbursement.
A school board may claim reimbursement under both Section 14—7.01 and Section 14—7.03 for those children served under Section 14—7.02 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 and facilities within the State Board of Education, all special education programs, all special education programs, and all educational programs for the types of handicapped children included in this Section shall be audited in determining the tuition amount.

Nothing in this Act shall be construed so as to prohibit reimbursement for the tuition of children placed in profit facilities. Private facilities shall provide adequate space at the facility for special educational programs approved by a school district or joint agreement for handicapped children who are residents of the facility. The district or joint agreement upon receipt of the school district or joint agreement upon request of the school district or joint agreement. If such a program provides space at no cost to the district or joint agreement for special education classes or programs provided to handicapped children who are residents of the facility, the district, or joint agreement shall not include any costs for the use of such facilities in its claim for reimbursement.

The State Board of Education shall establish such rules and regulations as may be necessary to implement the provisions of this Section.

For the 1977-78 school year and thereafter, each district shall claim reimbursement on a current basis. To make such a claim, the district shall file with the regional superintendent for transmission to the State Superintendent of Education by September 1, December 1 and March 1, respectively, an estimated claim computed in a manner acceptable to the State Superintendent of Education in accordance with this Section, and a final adjustment claim by June 15. Upon receipt of such a quarterly claim, the State Superintendents of Education shall direct the Comptroller to pay a specified amount to the district by the 15th day of September, December or March or the 30th day of June, respectively.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14—7.01 for the 1977-78 school year but for this amendment of Act 1977 shall not be paid unless the district claims to claim such classes for that entire school year.

If a school district's current reimbursement payment for the 1977-78 school year only is less than the prior year's reimbursement payment owed, 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.

Amended by P.A. 80-1096, § 1, eff. Nov. 23, 1977.

14—7.02a § 14—7.02a. Combined reimbursement.
A school district may claim reimbursement under both Section 14—7.01 and Section 14—7.02 for those children served under Section 14—7.03 whose needs also require placement under Section 14—7.02.

directly or through grants or purchases of services shall continue to provide these services according to current law and practice. Room and board costs 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 'PL 94-142: federal monies, or so much thereof as may actually be needed, shall annually be appropriated to pay for the additional costs of providing 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 State Board of Education Council 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 shallpropose rules and regulations for annual evaluations of the effectiveness of all special education programs and associated activities by the local school district of the individualized educational program for each child for whom it provides special education services.

Amended by P.A. 80-1403, § 1, eff. Aug. 23, 1982.

Chapter 122—SCHOOLS

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 shall be available to all handicapped children as defined in Sections 14-1-02 through 14-1-07. 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 specialist' appropriate 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 the special education committee. No child shall be eligible for admission to a special class for the educable mentally handicapped or for the trainable mentally handicapped except with a psychological evaluation and recommendation by a school psychologist. Consent shall be obtained from the parent or guardian of a child before any evaluation is conducted. If consent is not given then the school district may initiate an informal 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 school days from the date of referral by school authorities for evaluation by the district or date of application for admission by the parent or guardians of the child. After a child has been determined to be eligible for a special education class, such child must be placed in the appropriate program pursuant to the individualized educational program by or no later than the beginning of the next school semester. The district shall indicate to the parent or guardian 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 with the opportunity to be educated with children who are not handicapped. Placement in special classes, 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 in his home, a test reasonably related to his cultural environment. All testing and evaluation materials and procedures utilized for evaluation and placement shall not be racially or culturally discriminatory.

Nothing in this Article shall be construed to require any child to undergo any medical examination or medical treatment whose parents or guardian object thereto on the grounds that such examination or treatment conflicts with his religious beliefs.

School boards or their designees shall provide to the parents 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, or the provision of a free appropriate public education to the child or to have an impartial due process hearing under Section 14-5.03. The School Board or its designee shall provide a Written notification stating that it shall be the responsibility of the State Superintendent to develop uniform procedures regarding the procedures available under this Act and federal law 94-142 to be used by all school boards. The notice shall also inform the parents of or guardians 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
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 purposes 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 parents or guardian or 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 of 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 alternately 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 primarily involved in the diagnosis, education or care of the student or the State Board of Education. All impartial hearing officers shall have adequate training in federal and state statutes and rules 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 adversarial in nature, but shall be directed toward bringing all facts necessary 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 individuals with special knowledge or training with respect to the problems of handicapped children at the party's own expense. (b) present evidence and confront and cross-examine witnesses. It shall prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties 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 additional subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parents or guardians of the child or local school board to not more than 10. The State Board of Education and the school board shall share equally the costs of legal proceedings. The civil school board to not more than 10. The State Board of Education and the school board shall share equally the costs of legal proceedings. The civil 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. A board and the parents or guardian or their legal representatives within 5 days shall alternately 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 primarily involved in the diagnosis, education or care of the student or the State Board of Education. All impartial hearing officers shall have adequate training in federal and state statutes and rules 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 adversarial in nature, but shall be directed toward bringing all facts necessary 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 individuals with special knowledge or training with respect to the problems of handicapped children at the party's own expense. (b) present evidence and confront and cross-examine witnesses. It shall prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties 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 additional subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parents or guardians of the child or local school district to not more than 10. The State Board of Education and the school board shall share equally the costs of legal proceedings. The civil school board to not more than 10. The State Board of Education and the school board shall share equally the costs of legal proceedings. The civil 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. A board and the parents or guardian or their legal representatives within 5 days shall alternately 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 primarily involved in the diagnosis, education or care of the student or the State Board of Education. All impartial hearing officers shall have adequate training in federal and state statutes and rules 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 adversarial in nature, but shall be directed toward bringing all facts necessary 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 individuals with special knowledge or training with respect to the problems of handicapped children at the party's own expense. (b) present evidence and confront and cross-examine witnesses. It shall prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties 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 additional subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parents or guardians of the child or local school district to not more than 10. The State Board of Education and the school board shall share equally the costs of legal proceedings. The civil school board hearing officer shall render a decision and shall submit a copy of the finding and decision to the parents or guardian and to the local school board within 10 school days after the conclusion of the hearing. The hearing officer's decision shall be binding upon the local school board and the party in 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 Superintendent of Education shall have the right to bring a civil action with respect to the completion of a hearing. The procedures contained in this Section, which action may be brought in any court of competent jurisdiction. The civil action provided above shall not be exclusive of any rights or causes of action otherwise available. In any action brought in any circuit court of competent jurisdiction, the party shall receive the records of the administrative proceedings. The hearing officer or court shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence shall grant such relief as the court determines is appropriate for the student. During the pendency of any proceedings conducted pursuant to this Section, unless the State Superintendent of Education or the school district and the parents or guardian otherwise agree, the student shall remain in the then current educational placement of such student, or if applying for initial admission to the school district, shall, with the consent of the parents or guardian, be placed in the school district and such placement shall remain in effect until all such proceedings have been completed. Wherever the parents or guardian of a child of the type described in Sections 14-107 through 14-109 are not known or unavailable a person shall be appointed to serve as an advocate for the child in matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Persons shall be appointed as an advocate by the State Superintendent of Education. The State Board of Education shall promulgate rules and regulations establishing qualifications of such persons and the responsibilities and the procedures to be followed in making such appointments. Such advocate shall not be an employee of the school district, an agency created by joint agreement, under Section 10-32.31, an agency involved
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
aide or guardian becomes available unless other-
wise requested by the parents or guardian. The
assignment of a person as an aide at any time
suspended, terminates, or suspends the parent's or
guardian's legal authority relative to the child.
Any person participating is in good faith 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 refusal 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.


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

14-9.01 § 14-9.01 Qualifications of teachers,
other professional personnel and necessary work-
ers. No person shall be employed to teach any
class or program authorized by this Article who
does not hold a valid teacher 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 or program authorized by this
Article shall hold such certificate 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 24-11 to 24-16, 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
participating districts subject to the provisions of
Sections 24-11 to 24-16 inclusive. Added by act

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

14-10.01 § 14-10.01 Training and fellow-
ship program—Training of professional personnel.
The Superintendent of Public Instruction with the
advice of the Advisory Council may make train-
ing 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 60 semester hours of college
credit and provide to qualify for a fellowship must
be graduates of a accredited college or university.
Each fellowship and fellowship may be in
amounts of not more than $1,500 per academic
year for fellowships and not more than $3,000 per
academic year for fellowships except in addition,
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 institu-
tion. 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 approved college or university
providing pre-service 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 satisfaction to the Advisory Council.
The Superintendent of Public Instruction shall
administer the traineeship and fellowship account
and relate record of each person who is attending
an institution of higher learning under a trainee-
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 such traineeship, in accordance with
an appropriate certificate of the holder of such
fellowship endorsed by the institution of higher
learning attended by him.
Following the completion of such program of
study the recipient of such traineeship 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
1 year of service for each academic year of train-
ing received through a grant under this Article.
Persons who fail to comply with this provision may,
at the discretion of the Superintendent of Public
Instruction with the advice of the Advisory Council,
be required to refund all or part of the traineeship
or fellowship money received.
Amended by P.A. 77-1386, § 1, eff. Aug. 31, 1971.

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

14-11.01 § 14-11.01 Educational materials
coordinating unit. There shall be established within
the Office of the Superintendent of Public In-
struction under the direction of the Superintend-
ent an educational materials coordinating unit for
handicapped children to provide:
(1) Staff and resources for the coordination,
cataloging, standardization, production, procurement,
storage and distribution of educational materials
needed by visually handicapped children and
students.
(2) Staff and resources of an instructional ma-
terial center to include library, audio-visual, pro-
grammed, and other types of instructional materials
particularly adapted to the instruction of handi-
capped pupils and students.
The educational materials coordinating unit shall
have as its major purpose the improvement of in-
structional programs for handicapped children
and the in-service training of all professional personnel
associated with the programs, and to this end it is authorized to operate under rules
and regulations of the Superintendent of Public
Instruction with the advice of the Advisory Council.
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 purpose 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 statewide 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;
5. Developing and expanding services to deaf/blind individuals throughout the State. This will include auxiliary 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 contiguous to the City of Chicago. 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 dispensing 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 Children and Family Services, 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 serve as the referral clearinghouse for all deaf/blind individuals age 21 and older. Those individuals will be assisted by the center in locating vocational or other necessary 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 6 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 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 attaining 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 also 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 centers 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;
3. Standards for services in facilities serving deaf/blind individuals;
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 each by the Directors of the Department of Children and Family Services, and Mental Health and Developmental Disabilities, and 2 persons appointed by the Director of the Division of Vocational Rehabilitation. A 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 a one-year term. Vacancies in terms shall be filled by the original appointing authority. After the original terms, all members shall be for 3-year terms.

The above appointments shall be made within 90 days of the effective date of this amendatory Act.

Except for these members of the Advisory Board who are compensated for State service on a full-time basis, members shall be reimbursed for all actual expenses incurred in the performance of their
duties. Each member who is not compensated for their service on a full-time basis shall be compensated at a rate of $50 per day which he spends on Advisory Board duties. The Advisory Board shall meet at least 4 times per year and not more than 10 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 money 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 preapproval for reimbursement for costs of special education must be first submitted through the office of the regional superintendent of schools in the State Superintendent of Education on or before 30 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 this Article.

Applications 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 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 approval 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 forward the State Superintendent of Education with the original and one copy of the claim on or before August 15. The State Superintendent of Education shall notify the regional superintendent of schools before approving any such claims to determine their accuracy and whether they are in accordance with services and facilities provided under approved programs. Upon approval the State shall transmit, on or before September 30 the State report of claims to the Comptroller showing the amounts due to each school district for their instructional reimbursement claims. Beginning with the 1974-75 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. If, after presentation and inspection of the September 30 vouchers any claim has been redesignated by the State Superintendent of Education, subsequent vouchers shall be adjusted in amount to compensate for any overpayment or underpayment previously made. If money appropriated by the General Assembly 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 due 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 any 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 14-1-02 through 14-1-06 shall be paid in accordance with Section 14-1-03 for each school year ending June 30 to the school boards through the regional supervisors of education, and the State Comptroller out of any money 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, and other special education services for handicapped children.

(1) For each child in a school, handi capped children in hospital or home instruction who is enrolled in such school in accordance with rules prescribed by the State Board of Education and the State Superintendent of Education, with the regional superintendent of schools, and who is enrolled in a special education program approved by the State Board of Education and the State Superintendent of Education, shall be included in any reimbursement under this paragraph if the child is receiving special education services in accordance with a written program developed by the school district.

(2) The amount due each school board shall be determined by multiplying the number of each child enrolled in the school district as provided in paragraph (1) times the reimbursement rate provided in the State Board of Education and the State Superintendent of Education, with the regional superintendent of schools, for the previous school year.

The reimbursement rate for each child enrolled in the school district as provided in paragraph (1) shall be as provided for all special education programs in the State Board of Education and the State Superintendent of Education, with the regional superintendent of schools, for the previous school year.

The reimbursement rate for each child enrolled in the school district as provided in paragraph (1) shall be as provided for all special education programs in the State Board of Education and the State Superintendent of Education, with the regional superintendent of schools, for the previous school year.
CHAPTER 122 — SCHOOLS

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§ 14-13.01

Aid to pupils in schools.

Sec. 1. Purpose. 14A—1. Purpose. This section is for the purpose of providing educational opportunities to all children residing within the jurisdiction of the school district. 14A—2. Gifted children. "Gifted children" means those children whose mental development is accelerated beyond the average to the extent they need and use the special educational opportunities made available to them.

§ 14-13.02

Aid to schools.

Sec. 1. Purpose. 14A—1. Purpose. This section is for the purpose of providing educational opportunities to all children residing within the jurisdiction of the school district. 14A—2. Gifted children. "Gifted children" means those children whose mental development is accelerated beyond the average to the extent they need and use the special educational opportunities made available to them.
Chapter 122 — Schools

§ 14A-6

12 in districts with $16,000 but less than $30,000
1.5 in districts with $30,000 but less than $60,000
1.5 in districts with $60,000 but less than $125,000
1.5 in districts with $125,000 but less than $250,000
1.5 in districts with $250,000 but less than $500,000
In no case shall the per capita cost of such program to the district multiplied by the number of pupils in average daily attendance in the district's program not exceed the number of pupils in average daily attendance in the district.

(b) For each professional worker who needs the established standards for his position, employed in the district's program at the annual rate of $5,000.

On or before July 10, annually, the president and the secretary of the district shall certify to the Superintendent of Education the district's claim for reimbursement for the school year ended on June 30 next preceding. The Superintendent shall then check all such claims to ascertain compliance with the prescribed standards, and upon his approval shall certify to the director on or before July 25 to the State Superintendent of Education the annual report of claims for reimbursements. The Superintendent of Education shall then and upon approval shall transmit by September 15 the State report of claims to the State Commissioner and prepare the report showing the amounts due from the respective regions for their district reimbursement claims.

If the amount appropriated for such reimbursement is not sufficient to pay the claims as approved on the basis of the claims approved.

When one school district eligible for reimbursement under this section operates a school for children of the ages named for whom reimbursement is claimed, and such school is operated in the year of the current school term, the district shall be entitled to reimbursement for the services and materials furnished in the district as follows:

1. For the product of 1% of the number per capita cost of pupils included in the approved program for gifted children in the school districts of the state as determined by the State Board of Education, multiplied by the number of pupils in average daily attendance in the district, in the following manner:

1.5 in districts with $125,000 but less than $250,000

1.5 in districts with $250,000 but less than $500,000


§ 14A-7

Contracts for art, music, drama centers, experimental projects and institutes. The State Board of Education and the State Commissioner, to the extent of funds appropriated therefor, shall establish and conduct, under rules and regulations prescribed in the State Board of Education and such, contracts to such centers, experimental projects and institutes, and shall make contracts with school districts, colleges and universities for the performance of such services, in the same manner as provided in the State Board of Education and such, section of the Act.

Prior to entering into such contracts the State Board of Education, the State Commissioner, or any other person authorized by the State Board of Education or any other person authorized by the State Board of Education, shall determine that the services, experimental projects and institutes offered under such contracts are necessary and beneficial to the pupils and that such contracts are in the public interest and that the services, experimental projects and institutes are available to offer such services.
122 § 14A-6

CHAPTER 122—SCHOOLS

P. 172

School Code § 14A-6

14A-6. Educational projects or institutes already comprised of

With the approval of the performance of such
classes the State Superintendent of Education shall
approve and submit contracts for their pur-

the State Superintendent to be paid out

in the form of projects already supported for

the planning, operation and evaluation of pro-

immunization, or vaccination, for the improve-

ment of education programs that will serve

ments for children as
defined herein. Amended by act approved Aug. 29,

14A-7. Convulsing methods. The Super-

intendent of Public Instruction shall maintain

a consulting staff of persons qualified by

experience and training in the research

consultation and advice for the

planning, operation and evaluation of pro-

grams for the education of gifted children. Amended

14A-8. Fellowship program. The Super-

intendent of Public Instruction with the advice

and consent of the Board of Education may make fellow-

ship grants to persons of good character who are

graduates of a recognized college or university and

are interested in working in programs for the

education of gifted children, for full-time study at the

graduate level in programs designed to improve

their competence for working in such programs.

Such grants shall not exceed 50 in any academic

year and may be in amounts of $2,500.00 per

academic year and shall be granted under rules and

regulations prescribed by the Superintendent of

Public Instruction and issued pursuant to this Act.

The Superintendent of Public Instruction shall

administer the fellowship program and record

each member of such fellowship grants in such

manner as he shall conclude is sufficient to show

that such members have worked diligently in the

administration of the program and for the

education of gifted children in Illinois for a

period of at least five years.

Amended by P.A. 77-1254, § 1, eff. Aug. 21, 1971.

ARTICLE 14D. EDUCATIONALLY DISAD-

VANTAGED CHILDREN

See

14B-1. Purpose.

14B-2. Definitions.

14B-3. Extension of programs.

14B-4. Advisory council.

14B-5. Approval of programs.

14B-6. Standards.


14B-8. Funding.

Versteff added by act approved Jan. 20,

14D-1. Purpose. The purpose of

this enactment is to assist and encourage local

school districts in the development and improve-

ment of education programs that will serve

the educational needs of the public schools of

the State for educationally disadvantaged children as

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CHAPTER 45—Public 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. By: (1) extending the existing regulations governing assistance to States for education of handicapped children, (2) adding a new part on incentive grants programs for handicapped children aged three through five, and (3) making certain conforming amendments to the general provisions for State-administered programs.

These regulations govern the provision of formula and block grant funds 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 count rules were published in proposed form on September 1, 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:


SUPPLEMENTARY INFORMATION:

Rules and Regulations—Public Hearings

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 recognized the need for intensive public participation in the development of regulations, and took steps to insure maxi-
RULES AND REGULATIONS

ORGANIZATION OF REGULATIONS

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

(1) Part 100—State Administered Programs. This includes certain conforming amendments to the regulations under section 45:6(b)(11)(A) of the General Education Provisions Act.

(2) Part 121—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) Services, (D) Educational Services, (E) Procedural Safeguards, (F) State Administration, and (G) Allocation of Funds and Reports.

(3) Part 131—Incentive Grants. This governs the administration of the incentive grants program for handicapped children aged three through five, authorized under section 618 of the Act.

ANALYSIS OF REGULATIONS

Appendix A of Part 121 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 major changes made from the proposed rule published on December 30, 1976.

TOPICAL INDEX

Appendix B of Part 121 includes an index of the major topics in the regulations: (1) Appropriations, (2) Specialized Public Education Programs, (3) Procedural Safeguards, and the specific section of the Act in which such terms are used.

NOTE.—The Department of Health, Education, and Welfare, has determined that the rulemaking contains no major proposals requiring preparation of an Economic Impact Statement under Executive Order 11592 and 1968 Circular A-197, and certifies that an Economic Impact Analysis has been prepared. However, because the purpose of this regulation involving major issues is to ensure compliance with the content of subpart D of the regulations concerning implementation of the handicapped under section 616 of the Rehabilitation Act of 1973, the Department, while it has prepared an Economic Impact Statement for that regulation, does not require the same for this regulation. In the event of a finding that a major proposal is inconsistent with the requirements of the Rehabilitation Act of 1973, the Department, by further notice or amendment, will issue an Economic Impact Statement consistent with the requirements of the Rehabilitation Act of 1973.

OVERVIEW OF CHANGES IN THE PART 121 REGULATIONS

A substantial number of changes have been made in response to comments received on the proposed rules. However, few of these changes have resulted in adding major material requirements. Most of the changes are technical or have been made in an attempt to provide greater clarity or to add more explanatory material.

The rule as it was made has been explained in the margin to the text of the regulations. The purpose of these comments is to assist in making the regulations as clear as possible. The notes in the margin to the text of the regulations provide further explanations where necessary or to clarify or correct the language. The notes are intended to clarify any aspect of the regulations. The purpose of these comments is to assist in making the regulations as clear as possible. The notes in the margin to the text of the regulations provide further explanations where necessary or to clarify or correct the language. The notes are intended to clarify any aspect of the regulations.

Title 45 of the Code of Federal Regulations is amended as follows:

PART 100—STATE ADMINISTERED PROGRAMS

1. In Part 100, § 100.17 is revised to read as follows:

§ 100.17 General applications.

(a) The general application of a State must meet the requirements of section 45:6(b)(11)(A) of the General Education Provisions Act.

(b) A State does not have to submit its general application.

(30 U.S.C. 1232(a)(1)(A).)

(c) (1) The following statutes require that a State submit certain provisions to the Commissioner which are similar to provisions in the general application.

(2) Subject to paragraph (d) of this section, if the Commissioner has approved a State's general application, the State does not have to submit provisions required under the following statutes:

1. Compensatory education. Section 121(a), (2) and (3) of Title IX of the Elementary and Secondary Education Act of 1965, as amended.

(29 U.S.C. 1232(a)(1)(A)(I).)

2. School library resource. Section 223(a)(5), (6), and (7) of Title II of the Elementary and Secondary Education Act of 1965, as amended.

(29 U.S.C. 1232(a)(1)(A)(II).)

3. Supplementary educational centers and services; guidance counseling, and testing. Section 304(b)(1), (2), (3) and (4) of Title IX of the Elementary and Secondary Education Act of 1965, as amended.

(29 U.S.C. 1232(b)(1), (1)(A) and (B).)

4. Education of the handicapped. Section 611(a), (7),(8), and (10) of Part B of the Education of the Handicapped Act, as amended.

(29 U.S.C. 1232(b)(1), (1)(A) and (B) and (F).)

5. Adult education. Section 100(4)(b) and (7) of the Adult Education Act, as amended.

(1) (2) and (F).

6. Vocational rehabilitation. Section 1401(b), (2), (3), (4), and (5) of the Education Amendments of 1974. as amended.

(29 U.S.C. 1232(b)(1), (1)(A), (B), (C), and (F).

7. Structured instruction in academic subjects. Section 1004(a) and (b) of Title I of the National Defense Education Act of 1964, as amended.

(29 U.S.C. 1232(b)(1), (1)(A), (B), (C), and (D).

8. (c) (1) The general application does not change the legal substance of the provisions listed under paragraph (c) (2) of this section.

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(2) If a provision listed in paragraphs (c)(2) 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.

[EDITOR'S NOTE: References to U.S.C. sections and other statutory references have been updated since the publication of this document.]

2. In Part 1206, Sec. 1206.35 is revised to read as follows:

Sec. 1206.35 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 1206.15(a) or (b); or
(2) A general application and an annual program plan approved by the Commissioner in the case of the programs referenced in 1206.15(a).
(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date for which it is submitted.
(c) The Commissioner sends the State agency a notice of approval, including notice of the date on which 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.

[EDITOR'S NOTE: References to U.S.C. sections and other statutory references have been updated since the publication of this document.]

3. In Part 1212, Sec. 1212.35 is revised to read as follows:

Sec. 1212.35 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.

[EDITOR'S NOTE: References to U.S.C. sections and other statutory references have been updated since the publication of this document.]

These revisions are in effect as of the date the regulation is published in the Federal Register.
chased special education and related serv-
ices to meet their unique needs.
(b) To insure that the rights of handicapped children and their par-
ents are protected.
(c) To aynı States and localities to provide for the education of all handi-
capped children, and
(d) To assess and insure the effective-
ness of efforts to educate those children.
(20 U.S.C. 1400, Note.)
§ 121a-2 Applicability to State, local, and private agencies.
(a) This part applies to each State which receives payments under Part B of the Education of the Handi-
capped Act.
(b) Public agencies within the State. The provisions of this part apply to all politi-
cal subdivisions of the State that are in-
volved in the education of handicapped children. These would include: (1) The State educational agency, (2) local educa-
tional agencies and intermediate educa-
tional units, (3) other State agencies and schools (such as Department of Mental Health and Welfare and State schools for the deaf or blind), and (4) State correctional facilities.
(c) Private schools and facilities. Each public agency in the State is responsible for making sure that the rights and protec-
tions under this part are given to chil-
dren with handicaps who are placed in private schools and facilities by that public agency.
(See 112a.408-112a.409.)
(20 U.S.C. 1412(1), (8), 1412(b), 1412(a) (6), (b).)
Comment: The requirements of this part are being enforced on each public agency that has direct or delegate responsibility to provide spe-
cial education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is recer-
ing funds under Part B.
§ 121a-3 General provisions.
Assistance under Part B of the Act is subject to the provisions of 112a.101-112a.159 of this chapter, which include definitions and requirements relating to fiscal, admin-
istrative, property management, and other matters.
(20 U.S.C. 1417(b).)
Comment: Definitions of terms that are used throughout these regulations are ist-
ricted in this section. Other terms are defined
in the specific subparts in which they are used. There is a list of these terms and the specific sections and subparts in which they are defined:
Commen: (Section 112a.500 of Subpart E) Dissection (Section 112a.500 of Subpart E) Disciplinary services (Section 112a.510(b)(1)(B) of Subpart C).
Evaluation (Section 112a.500 of Subpart E) First priority children (Section 112a.500 of Subpart C).
Identification and classification (Section 112a.500 of Subpart E) Individualized educational program (Section 112a.500 of Subpart C).
Definition: "Handicapped children" means those children evaluated in accordance with 112a.395-112a.396 as being medically retarded, hard of hearing, deaf, speech impaired, visually handicapped, severely emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or having specific learning disabilities. The definitions of the terms "orthopedically impaired" and "specific learning disabilities" are described in the provisions of the Act.
§ 121a-4 Free appropriate public education.
As used in this part, the term "free appropriate public education" means special education and related services, which:
(a) Are provided at public expense, un-
der public supervision and direction, and without charge.
(b) Meet the standards of the State educational agency, including the re-
quiments of this part.
(c) Include preschool, elementary school, or secondary school education in the State involved.
(d) Are provided in conformity with an individualized education program which meets the requirements under 112a.340-112a.349 of Subpart C.
(20 U.S.C. 1416(b).)
§ 121a-5 Handicapped children.
(a) As used in this part, the term "handicapped children" means those children evaluated in accordance with 112a.395-112a.396 as being medically retarded, hard of hearing, deaf, speech impaired, visually handicapped, severely emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or having specific learning disabilities.
(b) The term "handicapped children" includes children who are emotionally disturbed, as defined in 112a.395-112a.396. Emotionally disturbed means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, manifested during the developmental period, which result in what is generally regarded as a "handicapping condition." (20 U.S.C. 1417(b).)
Comment: The term "handicapping condition" is defined as "handicapping conditions" described in 112a.395-112a.396 which are a severe emotional handicap that adversely affects a child's educational performance.
(4) "Mental retardation" means con-
stant impairment (such as mentally re-
tracted-blind, mentally retarded-ortho-
pedically impaired, etc.), the com-
parison of which causes such severe edu-
cational problems that they cannot be accommodated in special education pro-
grams solely for one of the impairments.
(b) The term does not include deaf-blind children.
(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomalies (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures of bones or burns which cause construc-
tional malformations.)
(7) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, sarcoidosis, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.
(c) A child is considered severely emotionally disturbed if the child is submitting to or frequently running away from home or school or place where the child is lawfully required to be, and such conduct is causing the child serious emotional disturbance.
(1) The term "seriously emotionally disturbed" is defined as follows:
(1) "Serious emotional disturbance" means a condition of the child which significantly impairs his capacity to benefit educationally from instruction in the regular classroom with the use of supplementary aids and services, and is manifested by one or a combination of the following characteristics over a long period of time and to such a degree that it is adversely affects the child's educational performance.
(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
(C) Inappropriateness of behavior or feelings with respect to peers and adults;
(D) A general pervasive mood of unhappiness or depression;
(E) A tendency to develop physical symptoms or fears associated with personal or school problems.
(2) The term "seriously emotionally disturbed" means a condition of the child which significantly impairs the child's educational performance and which adversely affects the child's educational performance.
(3) Such a condition means one which is severe, with sufficient impairment of hearing, vision, or speech as to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, manifested during the developmental period, which result in what is generally regarded as a "handicapping condition." (20 U.S.C. 1417(b).)
Comment: The term "handicapping condition" is defined as a "handicapping condition" described in 112a.395-112a.396 which is significant, and which results in what is generally regarded as a "handicapping condition." The term includes a child who is learning disabled, as defined in 112a.395-112a.396; a child who has a speech or language impairment, a hearing impairment, learning disabilities, or behavior disorders. The term includes a child who has a condition that adversely affects a child's educational performance.
adversely affects a child's educational performance.

(a) "Visually handicapped" means a student whose vision, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.


§ 112a.6 Includes.

As used in this part, the term "includes" means that the term named serves as all of the possible items that are covered, whether like or unlike the same.

20 U.S.C. 1417(b)."

§ 112a.7 Intermediate educational agency.

As used in this part, the term "intermediate educational agency" means any public authority, other than a local educational agency, which: (a) Is under the internal supervision of a State educational agency; (b) Is established by State law for the purpose of providing special public education on a regional basis; and (c) Provides special education and related services to handicapped children within such State.


§ 112a.8 Local educational agency.

As used in this part, the term "local educational agency" means a public board of education or other public entity or agency which, in addition to local school districts, has been designated within 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 the State. The term includes any school district or entity as 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.

(b) For the purposes of this part, the term also specifically includes intermediate educational units.

20 U.S.C. 1417(b).

§ 112a.9 Native language.

As used in this part, the term "native language" has the meaning given that term by section 703(a)(2) of the Elementary and Secondary Education Act, which provides as follows:

The term "native language," when used with reference to a person of Native American, Eskimo, or Aleut ancestry, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child.


Comment. Section 803(a)(2) of the Education of the Handicapped Act states that the term "language" means the language normally used by the parents of the child. (The term is used in the provision concerning the development of the Handicapped Children Act.) (20 U.S.C. 1401(12), 1412(b)(2), and 112a.53(b)(1) of Subpart B.) In using the term, the Act does not prevent the following means of communication: (1) In all cases, means with a child (including evaluation of the child), conversation in the language normally used by the child and not that of the parents, if there is a difference between the two.

(2) If a person is deaf or blind, or has no service language, the mode of communication would be that normally used by the person (e.g., sign language, braille, or oral communication).

§ 112a.10 Parent.

As used in this part, the term "parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 112a.11.

The term does not include the State if the child is a ward of the State.


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

§ 112a.11 Public agency.

As used in this part, the term "public agency" includes the State educational agency, intermediate educational agencies, and any political subdivisions of the State which are required by law to provide, or which provide, special education and related services to handicapped children.

20 U.S.C. 1411(b)(2); 1414(b); 1415(b).

§ 112a.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.

20 U.S.C. 1417(b).

§ 112a.13 Related services.

(1) Identification of children with hearing loss:

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

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

1. "Audiology" includes:

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

3. "Counseling and guidance of pupils, parents, and teachers regarding hearing loss; and

4. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid, and assessing the effectiveness of amplification.

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

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

6. "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.

7. "Occupational therapy" includes:

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

9. "Psychological services" includes:

10. "Recreational services" includes:

11. "School health services" means services provided by a qualified school nurse or other qualified person.

12. "Social work services in schools includes:

(a) Preparing a social or developmental history on a handicapped child:
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11. Group and individual counseling with the child and family.
12. Working with those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school and community.
13. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders.
14. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and
15. Counseling and guidance of parents, children, and teachers regarding speech and language as factors in the total educational program.
16. Transportation includes:
(a) Travel to and from school and between schools.
(b) Travel in and around school buildings, and
(c) Specialized equipment (such as special or adapted buses, lift, and ramps); if required to provide special transportation for a handicapped child.

Comment. With respect to related services, the Senate Report states:

The Committee bill provides a definition of "related services," stating clearly that all such services may be provided for each individual child and that such services include many disabilities, and assessment of handicapping conditions, and the provision of services to minimize the effects of such conditions.

Senate Report No. 94-146, p.13 (1975).}

The list of related services is not exhaustive and may include such other supportive services as may be necessary for the educational benefit of the handicapped child.

There are certain kinds of services which might be provided by persons from a variety of professional titles, depending upon requirements in individual States. For example, counseling services may be provided by social workers, psychologists, or guidance counselors, and psychological testing might be done by qualified psychological examiners, pursuant to educational guidelines, depending upon State standards.

Each related service defined under this part may include those medical and supervisory activities that are necessary for proper planning, management, and evaluation.

§121a.14 Special education.

(a) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(b) The term includes speech pathology, or any other related services, if the services consist of specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.

(c) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child.

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

(1) "As its cost" means that all specially designed instruction is provided without charge, but does not exclude incidental fees, such as non-handicapped students or their parents as part of the regular education program.

(2) "Physical education" is defined as follows:

(a) The term means the development of:
(i) Physical and motor skills;
(ii) Fundamental motor skills and patterns; and
(iii) Skills in aquatic, dance, and individual and group games and sports (including intramural and lifetime sports).

(b) The term includes special physical education, adapted physical education, movement education, and motor development.

(20 U.S.C. 1401(18).

(3) "Vocational education" means prescribed educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate degree.

(20 U.S.C. 1401(18).

Comment. (a) The definition of "special education" is a particularly important one since its regulations, since a child is not handicapped unless he or she needs special education. The definition of "special education" (section 121a.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services" and the child because the child "is not handicapped" is not covered under the Act.

(b) The above definition of vocational education is taken from the Vocational Education Act of 1963, as amended by Pub. L. 94-482. Under this Act, "vocational education" includes occupational and continuing education programs.

(b) 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.

(20 U.S.C. 1401(b).)
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§ 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 notices.

(2) The dates on which the notice was announced or published.

(3) A list of the dates and locations of the public hearings on the annual program plan.

(4) 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.

(5) 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.

§ 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 ensures that all handicapped children have the right to a free appropriate public education within the ages and time limits 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 time limits for implementing the policy, in accordance with 121a.122.

§ 121a.122 Timeliness and access for a free appropriate public education.

(a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake 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, 1980.

(b) Documents relating to timeliness. Each annual program plan must include a copy of each statute, court order, attainment decision, and other State document which demonstrates that the State has established time limits in accordance with paragraph (a)(3) 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, six, seven, eight, nine, ten, or twenty-one years of age to the extent that the requirement would be inconsistent with State law or present, or the order of any court, respecting public education for one or more of those age groups in the State.

§ 121a.123 Full educational opportunity goal—data requirement.

(1) The State shall provide a copy of each State law, court order, and other document which provides a basis for the exception.

(b) The documents relating to exceptions. Each annual program plan must:

(1) Describe in detail the extent to which the exception in paragraph (a)(3) of this section applies to the State, and

(2) Include a copy of each State law, court order, and other document which provides a basis for the exception.

§ 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:

(A) Who are receiving a free appropriate public education.

(B) Who need, but are not receiving a free appropriate public education.

(C) Who are enrolled in public and private institutions who are receiving a free appropriate public education, and

(D) 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—timetable.

(a) General requirement. Each annual program plan must contain a detailed and specific 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:

(A) By each annual program plan for each disability category except for children aged birth through two; and

(B) For each of the following age ranges: birth through two, three through five, six through seventeen, and eighteen through twenty-one.

§ 121a.126 Full educational opportunity—facilities, personnel, and services.

(a) General requirement. Each annual program plan must include a description of the kind and number of facilities, personnel, and services necessary throughout the State 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 other educational 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
the number of each of those who are currently enrolled in the State; and
(2) The number of additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, vocational education teachers, speech-language pathologists, audiology, special education teaching specialists, physical education teachers, occupational therapists, physical therapists, speech-language pathologists, audiology, teacher aides, vocational education teachers, work study counselors, educational psychologists, career counselors, school psychologists, school social workers, and physical education teachers, therapeutic recreation specialists, diagnostic personal, and non-instructional staff.

4. The number and kind of facilities needed for handicapped children and the number of such facilities currently in use in the State, including regular classrooms serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, public special education day schools, private special education residential schools, public special education residential schools, hospital programs, occupational therapy facilities, physical therapy facilities, public sheltered workshops, and other types of facilities.

5. The total number of transportation units needed for handicapped children, the number of transportation units designated for use in the State, and the number of handicapped children who use these units to benefit from educational services.

6. Data categories. The data required under paragraphs (b) and (c) of this section must be reported in the following categories:

(a) General. Each annual program plan must include information regarding the number and kind of facilities, transportation, and education services for handicapped children.

(b) Resource categories. The data required under paragraphs (b) and (c) of this section must be reported in the following categories:

(1) The number and kind of facilities, transportation, and education services for handicapped children.

(2) The number of additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, vocational education teachers, speech-language pathologists, audiology, teacher aides, vocational education teachers, work study counselors, educational psychologists, career counselors, school psychologists, school social workers, and physical education teachers, therapeutic recreation specialists, diagnostic personal, and non-instructional staff.

(3) The total number of transportation units needed for handicapped children, the number of transportation units designated for use in the State, and the number of handicapped children who use these units to benefit from educational services.

(4) Data categories. The data required under paragraphs (b) and (c) of this section must be reported in the following categories:

(a) General. Each annual program plan must include information regarding the number and kind of facilities, transportation, and education services for handicapped children.

(b) Resource categories. The data required under paragraphs (b) and (c) of this section must be reported in the following categories:

(1) The number and kind of facilities, transportation, and education services for handicapped children.

(2) The number of additional personnel needed, and the number currently employed in the State, including school psychologists, school social workers, vocational education teachers, speech-language pathologists, audiology, teacher aides, vocational education teachers, work study counselors, educational psychologists, career counselors, school psychologists, school social workers, and physical education teachers, therapeutic recreation specialists, diagnostic personal, and non-instructional staff.

(3) The total number of transportation units needed for handicapped children, the number of transportation units designated for use in the State, and the number of handicapped children who use these units to benefit from educational services.

(c) Data categories. The data required under paragraphs (b) and (c) of this section must be reported in the following categories:

(1) Estimates for services all handicapped children who require special education and related services.

(2) Current year data, based on the actual number of children receiving special education and related services as reported on Subparts C and D.

(3) Estimates for the next school year.

(4) Ratio of: Each annual program plan must include a description of the plan that has been used, and expected outcomes.

(5) Description of the resources named in these activities in that plan have been used.

(6) Describe the method the State uses to determine which children are currently receiving special education and related services, and describes which children are not receiving special education and related services. The State shall describe the method the State uses to determine which children are currently receiving special education and related services, and describes which children are not receiving special education and related services, and describes which children are not receiving special education and related services.

(7) Each annual program plan must include procedures which the State will use to ensure that the information is collected, used, or maintained under this section.

(8) Information. Each annual program plan must include:

(a) General. Each annual program plan must include the following:

(1) Designate the agency responsible for coordinating the planning and implementation of the policies and procedures under paragraph (a) of this section.

(2) Name each agency that participates in the planning and implementation of the policies and procedures under paragraph (a) of this section, and describe the role and extent of its participation.

(3) Describe the extent to which:

(i) The activities described in paragraphs (a) of this section have been achieved under the current annual program plan.

(ii) The resources named in these activities in that plan have been used.

(k) Each annual program plan must include:

(i) A copy of each State plan, policy, and standard that requires the manner in which individualized education programs are developed, implemented, reviewed, and revised.

(ii) The manner in which the State educational agency follows in monitoring and evaluating these programs.

(l) Each annual program plan must include:

(i) Reporting requirements to be carried out during the next school year, including the role of the agency named under paragraph (b) (1) of this section, timelines for completing these activities, and the resources that will be used, and expected outcomes.

(ii) Description of the policies and procedures under paragraph (a) of this section that will be monitored to ensure that the State educational agency obtains:

(iii) The number of handicapped children within each disability category that have been identified, located, and evaluated.

(iv) Information adequate to evaluate the effectiveness of those policies and procedures:

(a) General. Each annual program plan must include:

(1) Reporting requirements to be carried out during the next school year, including the role of the agency named under paragraph (b) (1) of this section, timelines for completing these activities, and the resources that will be used, and expected outcomes.

(2) Description of the policies and procedures under paragraph (a) of this section that will be monitored to ensure that the State educational agency obtains:

(3) The number of handicapped children within each disability category that have been identified, located, and evaluated.

(4) Information adequate to evaluate the effectiveness of those policies and procedures:
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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.559 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. 1412(b)(6)).

§ 121a.133 Selection in evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in §§ 121a.530–121a.534 of Subpart E are met.
(20 U.S.C. 1412(b)(1)).

§ 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.606 of Subpart F are met.
(b) The information under paragraph (a) of this section must include a copy of each State statute, State regulation, signed agreement between respective agency officials, and any other document that shows compliance with this paragraph.
(20 U.S.C. 1412(b)).

§ 121a.135 Monitoring procedures.

Each annual program plan must include information which shows that the requirements in §§ 121a.601 and 121a.602 of Subpart F are met.
(20 U.S.C. 1412(b)).

§ 121a.136 Implementation procedures—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 established for the handicapped children served by that public agency.
(20 U.S.C. 1412(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. 1412(7)(A)).

§ 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 1965 (20 U.S.C. 281(a)(3)), section 308 (b)(8) of that Act (20 U.S.C. 684(a)(8)) or Title IV-D of that Act (20 U.S.C. 1521), and section 110(a) of the Vocational Education Act of 1962, 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, in only 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. 1412(a)(5)).

§ 121a.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under § 121a.380–121a.397 of Subpart G.
(20 U.S.C. 1412(a)(5)).

§ 121a.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart H are met.
(20 U.S.C. 1412(a)(6)).

§ 121a.141 Recovery of funds for misclassified use.

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 erroneously classified as eligible to be counted under section 611(a) or (d) of the Act.
(20 U.S.C. 1412(a)(6)).

§ 121a.142 Control of funds and property.

Each annual program plan must provide assurance satisfactory 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. 1412(a)(6)).

§ 121a.143 Records.

Each annual program plan must provide for keeping records and accounting 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. 1412(a)(7)(B)).

§ 121a.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency reasonable notice and an opportunity for a hearing.
(20 U.S.C. 1412(a)(8)).

§ 121a.145 Prohibition of commingling.

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. 1412(a)(9)).

Comment: This assurance is satisfied by the use of a separate accounting system that includes an "audit trail" of the expenditures of the Part B funds. Separate bank accounts are not required. (See 46 FR 1008, Subpart P (Cash Depositories).)

§ 121a.146 Annual evaluations.

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. 1412(a)(11)).

§ 121a.147 State advisory panel.

Each annual program plan must provide that the requirements of § 121a–
650–121a.653 of Subpart F are met.
(20 U.S.C. 1412(a)(12)).

§ 121a.148 Policies and procedures for use of Part B funds.

Each annual program plan must set forth policies and procedures to ensure 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(c) of the Act.
(20 U.S.C. 1412(a)(12)).

§ 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.370 of Subpart C and § 121a.626 of Subpart F—
(1) An inventory of administrative positions; and a description of duties for each person whose salary is paid in whole or in part with those funds.
(2) For each position, the percentage of salary paid with those funds.
(3) A description of each administrative activity the State educational agency will carry out during the next school year with those funds.
(4) 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, and the activities the State advisory panel will undertake during that period with those funds.
(b) Local educational agency allocation. Each annual program plan must include:—
(1) An estimate of the number and percent 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).
(2) An estimate of the number of local educational agencies which will receive
an allocation under a consolidated application.
(3) An estimate of the number of con-
mibulated applications and the average number of local educational agencies per application,
and
(4) A description of direct services the State educational agency will provide under § 121a.385 of Subtitle C.
(20 U.S.C. 1400(b)(1) (B)(1) )
§ 121a.185 Meaning the excess. cost requirement.
(a) A local educational agency means the excess cost requirement if it has on the average spent at least the minimum amount designated under § 121a.184 for the education of its handicapped children. This amount may not include cap-
ital开支 on or in the school district in the school districts taken as a whole.
(b) Each local educational agency must keep records adequate to show that the excess cost is incurred.
(20 U.S.C. 1400(b) (2)); 1464(a) (1).)

Comment: The following is an example of how a State educational agency might compute the minimum average amount in excess spent for the education of each of its handicapped children, under § 121a.184. This example is based on the data from the State in the preceding school year. See the note above for a description of the computation for handicapped children in the State. A local educational agency must compute the excess cost requirement for each handicapped child in its State in the preceding school year. Only capital payments made for the benefit of handicapped children are considered.

Example: A local educational agency spent the (b) amount for each of its handicapped children on the basis of the data for the preceding school year. If the average amount spent for the education of each of its handicapped children was $1,000, the State educational agency would have to determine the minimum average amount in excess spent for the education of each of its handicapped children. The following is an example of how a State educational agency might compute the minimum average amount designated under § 121a.184 for the education of each of its handicapped children: (1) A local educational agency must spend at least the minimum amount designated under § 121a.184 for the education of its handicapped children. This amount may not include capital payments on or in the school district taken as a whole. Each local educational agency must keep records adequate to show that the excess cost is incurred. (b) A local educational agency must use funds under Part B of the Act for the education costs of providing special education and related services for handicapped children. (20 U.S.C. 1400(b)(1) (B)(1) )
(b) The excess cost requirement does not prevent a local educational agency from using Part B funds 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.

(28 U.S.C. 1401-20; 1401-46 (1)).

§ 121a.193 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(1)(4)(A) (1) of the Act (121a-360.1(a)(1) of Subpart B); 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) The criteria for approval.
The State educational agency shall establish standards and procedures for determinations under paragraphs (b)(1) and (b)(2) of this section.

(28 U.S.C. 1444(e) (11)).

§ 121a.194 Funding under consolidated applications.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to interested parties, determines that an application does not meet one or more of the requirements of this part, the State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.

(b) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.

(28 U.S.C. 1444(e) (11)).

§ 121a.184 Compensation of excess costs—consolidated applications.

The minimum average amount under § 121a.182 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.

(28 U.S.C. 1444(e) (11)).

§ 121a.185 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 of the Act 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 of the Act to pay for all of the costs directly attributable to the education of a handicapped child, in cases where the administrative responsibility must be carried out exclusively by the intermediate educational unit.

(28 U.S.C. 1444(e) (3)(C)).

§ 121a.193 State educational agency approved (disapproved).

(a) Approval. A State educational agency shall approve an application submitted by a local educational agency if the State educational agency determines that the application meets the requirements under § 121a-270-121a-240. However, the State educational agency may not award, on approval application until the State educational agency determines that the application meets the requirements under § 121a-270-121a-240.

(b) Disapproval. The State educational agency shall disapprove an application if the State educational agency determines that the application does not meet one or more requirements under § 121a-270-121a-240.

(28 U.S.C. 1441(b) (1)).

(c) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.

§ 121a.184 Excess costs—limitations on use of Part B funds.

§ 121a.185 Excess costs—limitations on use of Part B funds.

§ 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 of the Act 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 of the Act 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.

(28 U.S.C. 1401-20; 1401-46 (1)).

§ 121a.193 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(1)(4)(A) (1) of the Act (121a-360.1(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) The criteria for approval.
The State educational agency shall establish standards and procedures for determinations under paragraphs (b)(1) and (b)(2) of this section.

(28 U.S.C. 1444(e) (11)).

§ 121a.194 Funding under consolidated applications.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to interested parties, determines that an application does not meet one or more of the requirements of this part, the State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.

(b) In carrying out its functions under this section, each State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.

§ 121a.184 Excess costs—limitations on use of Part B funds.

§ 121a.185 Excess costs—limitations on use of Part B funds.

§ 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 of the Act 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 of the Act 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.

(28 U.S.C. 1401-20; 1401-46 (1)).

§ 121a.193 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(1)(4)(A) (1) of the Act (121a-360.1(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) The criteria for approval.
The State educational agency shall establish standards and procedures for determinations under paragraphs (b)(1) and (b)(2) of this section.

(28 U.S.C. 1444(e) (11)).

§ 121a.194 Funding under consolidated applications.

(a) If a State educational agency, after giving reasonable notice and an opportunity for a hearing to interested parties, determines that an application does not meet one or more requirements of this part, the State educational agency shall consider any decision resulting from a hearing under § 121a-193 or any appeal thereof. The decision of the State educational agency shall be given a weight which is adverse to the local educational agency involved in the decision.
(b) Each application must describe: (1) The types of alternative placements that are available for handicapped children, and (2) The number of handicapped children within each disability category who are served in each type of placement.

(30 U.S.C. 1416(a) (1)(C)(i))

§ 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 only for costs which exceed the amount computed under §121a.144 and which are directly attributable to the education of handicapped children.

(30 U.S.C. 1416(a) (1)(C)(iv))

§ 121a.230 Nonreimbursing.

(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 or average per capita amount of State and local school funds budgeted for the local educational agency for expenditures in the current fiscal year for the education of handicapped children must be at least equal to the total amount or average per capita amount of State and local school funds actually expended for the education of handicapped children in the most recent fiscal year for which the information is available. Allowance may be made for the following:

(i) Differences in enrollment of handicapped children; and

(ii) Unusually large amounts of funds expended for each long-term purpose as the acquisition of equipment and the construction of school facilities; and

(2) The local educational agency must not use Part B funds to displace State or local funds for any particular cost or service.

(30 U.S.C. 1416(a) (1)(C)(v))

§ 121a.232 Information—report.

Each application must provide that the local educational agency furnish in-formation (which, in the case of reports related to other mandatory or required in-formation which is not applicable to the local educational agency and related to program objectives) as may be necessary to ensure that the funds referred to are those which the State or local agency normally spend at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Com-missioner looks to see if Part B funds are used on either an aggregate basis or for a given expenditure. This means that if an L.423 spent $100,000 for special education in FY 1977, it must budget at least 100,000 in FY 1978. It may not be used in one of the conditions in §121a.230 (b)(1) appear.

Whether a local educational agency complies with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been reduced from local funding to Part B funding, this would appear to be appropriate. However, if that teacher was taking over a different teaching task (another teacher, for example), it would not be appropriate for it to reduce the teacher's salary to Part B funding for increasing in-service services for handicapped children over what previously notion. The extent of the expenditure is to ensure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with that aim in mind. The reimbursing requirement is not intended to inhibit better services to handicapped children.

§ 121a.231 Comparable services.

(b) A local educational agency may not use funds under Part B to 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 in services provided to other handicapped children in that local educational agency.

(2) 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. 1416(a) (1)(C)(ix))

Comment. Under the “comparability” require-ment, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in a local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. That, of course, is subject to the other requirements of the Act, including the provisions under §121a.379-121a.326.

§ 121a.232 Information—report.

Each application must provide that the local educational agency furnishes in-formation (which, in the case of reports related to other mandatory or required in-formation which is not applicable to the local educational agency and related to program objectives) as may be necessary to ensure that the funds referred to are those which the State or local agency normally spend at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Com-missioner looks to see if Part B funds are used on either an aggregate basis or for a given expenditure. This means that if an L.423 spent $100,000 for special education in FY 1977, it must budget at least 100,000 in FY 1978. It may not be used in one of the conditions in §121a.230 (b)(1) appear.

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Whether a local educational agency complies with respect to a particular cost would depend on the circumstances of the expenditure. For example, if a teacher's salary has been reduced from local funding to Part B funding, this would appear to be appropriate. However, if that teacher was taking over a different teaching task (another teacher, for example), it would not be appropriate for it to reduce the teacher's salary to Part B funding for increasing in-service services for handicapped children over what previously notion. The extent of the expenditure is to ensure that Part B funds are used to increase State and local efforts and are not used to take their place. Compliance would be judged with that aim in mind. The reimbursing requirement is not intended to inhibit better services to handicapped children.

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(2) 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. 1416(a) (1)(C)(ix))

Comment. Under the “comparability” require-ment, if State and local funds are used to provide certain services, those services must be provided with State and local funds to all handicapped children in a local educational agency who need them. Part B funds may then be used to supplement existing services, or to provide additional services to meet special needs. That, of course, is subject to the other requirements of the Act, including the provisions under §121a.379-121a.326.

§ 121a.232 Information—report.

Each application must provide that the local educational agency furnishes in-formation (which, in the case of reports related to other mandatory or required in-formation which is not applicable to the local educational agency and related to program objectives) as may be necessary to ensure that the funds referred to are those which the State or local agency normally spend at some time before the use of the Part B funds. Therefore, in judging compliance with this requirement, the Com-
agency to perform its duties under this part, including information relating to the educational achievement of handicapped children.


§ 121a.333 Records. Each application must provide that the local educational agency keeps such records on and reports received under § 121a.333 are public information.

(b) In implementing the requirements of paragraphs (a) and (b), each educational agency shall use methods for public participation within its jurisdiction which are comparable to those used under § 121a.334 of this subpart. However, the local educational agency is not required to hold public hearings.


§ 121a.336 Individually designed education programs. Each application must include procedures to assure that the local educational agency complies with § 121a.344 through § 121a.346 of Subpart C.


§ 121a.336 Local policies consistent with this part. Each application must provide procedures satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with sections 612(12) and 613(a) of the Act.


§ 121a.337 Procedural safeguards. Each application must provide procedures for children whose public education services are provided under §§ 121a.346 through § 121a.348 of Subpart C.


§ 121a.338 Use of Part B funds. Each application must describe how the local educational agency will use the funds under Part B of this Act during the next school year.


§ 121a.339 Non-discrimination and nondisadvantage of handicapped individuals. Each application must include an assurance that the program assisted under Part B of this Act will be operated in compliance with Title IV of the Code of Federal Regulations Part 84 (Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance). The local educational agency may incorporate this assurance by reference in an agreement entered into with the Department of Education.


§ 121a.339 Applicable regulations. The Secretary of Education shall comply with the requirements of this Act for grants of $150,000 or less.


§ 121a.336 Public hearings 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 the opportunity for comment by the general public on the plan.

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Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 112a.300 Timelines for free appropriate public education.

(a) General. 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, 1976, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1979.

(b) Age ranges. 1-17. This paragraph provides rules for applying the requirement in paragraph (a) of this section to children under the age of 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 State must make a free appropriate public education available to 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 handicapped children of the same age.

(3) If a public agency provides education to a child in the State, it must make a free appropriate public education available to handicapped children of the same age.

(c) The requirement is inapplicable with a court order which governs the provisions of free appropriate public education to handicapped children in that State.


Comment. 1. The requirement to make a free appropriate public education available to all handicapped children within the State who are in the age ranges required under section 112a.300 and who are in special education and related services includes handicapped children already in such services who are not covered under the priorities under § 112a.332.

2. In order to be in compliance with this rule, States must make the following determinations with respect to handicapped children:

(a) Identification, placement, and evaluation of handicapped children;

(b) Appropriate placement of handicapped children;

(c) Appropriate assignment of special education and related services.

Each public agency shall take steps to insures that its handicapped children have an opportunity to participate in the regular educational programs and services available to non-handicapped children in the State.

This means that before September 1, 1976, every child who has been referred or is on a waiting list for evaluation (identifying children in school as well as those not receiving an evaluation) must be evaluated in accordance with § 112a.350-112a.352 of Subpart X. 21 as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1, 1976, and all other applicable requirements of this part must be met.

§ 112a.301 Free appropriate public education.

(a) Each State may use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of this part. For example, when it is necessary to place a handicapped child in a residential facility, a State could use joint agreements between the agencies involved for sharing the cost of that placement.

(b) Nothing in this part relieves an otherwise similar third party from an otherwise valid obligation to provide or to pay for services provided to a handicapped child.

18 U.S.C. 1413(b) (1); 1413(b) (3) (B).

§ 112a.302 Residential placements.

If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

18 U.S.C. 1413(b) (3); 1413(a) (4) (B).

Comment. This requirement applies to programs which are made by public agencies for educational purposes, and includes placements in State-operated institutions for the handicapped, such as a State school for the deaf and blind.

§ 112a.303 Proper functioning of hearing aids.

Each public agency shall ensure that the hearing aids are used by deaf and hard of hearing children in school are functioning properly.

18 U.S.C. 1413(b) (3).
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area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

§ 121a.306 Nonacademic services.

(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 individualized plans for employment.

(26 U.S.C. 1415 (a); 1416 (a) (1) (C)).

§ 121a.307 Physical education.

(a) General. Physical education services, specially designed if necessary, must be made available to handicapped children receiving a free appropriate public education.

(b) Specialty physical education. Each handicapped child must be afforded the opportunity to participate in the regular physical education program available to non-handicapped 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.

(d) 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 it 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 child receives appropriate physical education services in compliance with paragraphs (a) and (c) of this section.

(26 U.S.C. 1416 (a) 1416 (b) 1415 (B) 1416 (a) (6)).

Comment. The Report of the House of Representatives on Pub. L. 94-443 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 non-handicapped 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 make whatever screen is necessary to assure that these physical education services are available to all handicapped children, and that specifically included physical education is provided to handicapped children, well in advance the Committee expects such services to be specially designed where necessary."

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(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 121a.305.

(20 U.S.C. 1411 (b) (1), (b) (2), (2) ; 1415 (b) (1), (b) (2), (c) (1) (B) (1) (C) (A) (B)).

(c) State and local educational agencies may not use funds under Part B of the Act for preschool training.

(20 U.S.C. 1411 (a) 2; Senate Report No. 94-1068, p. 36 (1976)).

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds except the provisions used (or State administration) for the prior. A State may have to set aside a portion of its Part B allotment to be able to serve low-income and special education services to local educational agencies. If a State does not have these services, it may

1. To continue supporting child identification, location, and evaluation activities;

2. To provide free appropriate public education to low-identified handicapped children;

3. To meet the full educational opportunities goal required under sections 121a 204, including employing additional personnel and providing academic courses, in order to increase the level, intensity and quantity of services provided to individualized education teams);

4. To meet the other requirements of Part B.

§ 121a.322 Five priority children— 1977

5. In school year 1977-1978, if a major component of a first priority child's program is physical education, the child may not be available (for example, there is no qualified teacher). The public agency responsible for the child's education shall:

(a) Provide an interim program of services for the child; and

(b) Develop an individualized education program for full implementation no later than September 1, 1978.

(b) A local educational agency may use Part B funds for training or other services in school year 1977-1978 only if all of its first priority children have available to them at least an interim program of services.

(c) A State educational agency may use Part B funds for training or other support services needed to provide that child with a free appropriate public education.
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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 free appropriate public education available to them;

(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child;

§ 121a.334 Application of local scheme.

A 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 free appropriate public education available to them;

(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child.

§ 121a.334 Application of local scheme.

A 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 free appropriate public education available to them;

(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child.

§ 121a.334 Application of local scheme.

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(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child.

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(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child.

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A 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 free appropriate public education available to them;

(b) That the local educational agency has plans for the identification, location, and evaluation of handicapped children, as described in its application, and

(c) That whenever a first priority child is not evaluated, the local educational agency makes available a free appropriate public education to the child.

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The agency shall review the summary of the child's individual education program to determine if the agency is providing services to the extent specified in the program and if the services are meeting the child's unique needs. If the agency finds that the services provided do not meet the needs of the child, it shall develop a new program or modify the current program to ensure that the child's needs are being met. The agency shall also ensure that the parent or guardian of the child is informed of the agency's findings and recommendations.

(3) The agency shall also develop an individualized education program for each handicapped child who was placed in a private school or facility by the agency before the effective date of these regulations.

(4) The agency shall review the summary of the child's individual education program to determine if the agency is providing services to the extent specified in the program and if the services are meeting the child's unique needs. If the agency finds that the services provided do not meet the needs of the child, it shall develop a new program or modify the current program to ensure that the child's needs are being met. The agency shall also ensure that the parent or guardian of the child is informed of the agency's findings and recommendations.

(5) The agency shall review the summary of the child's individual education program to determine if the agency is providing services to the extent specified in the program and if the services are meeting the child's unique needs. If the agency finds that the services provided do not meet the needs of the child, it shall develop a new program or modify the current program to ensure that the child's needs are being met. The agency shall also ensure that the parent or guardian of the child is informed of the agency's findings and recommendations.

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The State educational agency may provide special education and related services under §121a.358(e) in the manner and at the location it considers appropriate. However, the manner in which the education and services are provided must be consistent with the requirements of this part including the least restrictive environment provisions in §121a.356-121a.365 of Subpart D.

(3)“Support services” includes implementing the comprehensive system of personal development under §121a.358-121a.365, recruitment and training of hearing officers and surrogate parents, and public information and parental training activities relating to a free appropriate public education for handicapped children.

§121a.370 State monitoring.

Beginning with the period July 1, 1978-June 30, 1979, and for each following period for direct and support services under §121a.370 must be conducted on the State’s use of funds under §121a.358.

(b) The requirement in §121a.370(1)(B) will be excluded from the manner in which the amount of funds expended for each major purpose area (e.g., the comprehensive system of personal development) is at least equal to the expenditure of Federal funds.

§121a.372 Appropriability of unexpended funds.

Beginning with funds appropriated for Fiscal Year 1977 and for each following Fiscal Year, the requirement in section 613(a) of the Act, which prohibits supplementation with Federal funds, does not apply to funds that the State uses (a) on the part for education or support services under §121a.356(a), (b) in the provision of any service under §121a.357, (c) for administration, direct services, or support services.

§121a.373 Comprehensive system of personal development.

(1) Scope of system.

Each annual program must include a plan of personal development which includes:

(a) The services necessary to carry out the purpose of the Act and any other activity sufficient to carry out this personal development plan.

(b) Procedures to ensure that all personal services are available to personnel and a free and appropriate public education for handicapped children.

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational positions and materials developed through their projects.

§121a.374 Purification of other agencies.

(1) The State educational agency must ensure that all public and private institutions of higher education, and other educational programs (including representatives of handicapped, parents, and other advocacy organizations) in the State which have an interest in the preparation of personnel for special educational and occupational positions and materials developed through these projects.

§121a.375 State monitoring.

Beginning with the period July 1, 1978-June 30, 1979, and for each following period for direct and support services under §121a.370 must be conducted on the State’s use of funds under §121a.358.

(3) The requirement in §121a.370(1)(B) will be excluded from the manner in which the amount of funds expended for each major purpose area (e.g., the comprehensive system of personal development) is at least equal to the expenditure of Federal funds.

§121a.377 Applicability of unexpended funds.

Beginning with funds appropriated for Fiscal Year 1977 and for each following Fiscal Year, the requirement in section 613(a) of the Act, which prohibits supplementation with Federal funds, does not apply to funds that the State uses on the part to provide services under §121a.356(a) of Subpart B for administration, direct services, or support services.

§121a.378 Comprehensive system of personal development.

(1) Scope of system.

Each annual program must include a plan of personal development which includes:

(a) The services necessary to carry out the purpose of the Act and any other activity sufficient to carry out this personal development plan.

(b) Procedures to ensure that all personal services are available to personnel and a free and appropriate public education for handicapped children.

(c) Effective procedures for acquiring and disseminating to teachers and administrators of programs for handicapped children significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational positions and materials developed through these projects.

(b) The process used in determining the mini-course training needs of personal engaged in the education of handicapped children.

(c) The areas of which training is needed such as individualized education programs, non-discriminatory testing, least restrictive environment, procedural safeguards, and surrogate parents.

(d) Specify the groups requiring training (such as special teachers, regular teachers, educational administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, counselors, hospital personnel, parents, occupational therapists, physical therapists, social workers, social workers, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents).

(e) Describe the content and nature of training for each area under paragraph (b) of this section.

(f) Describe how the training will be provided in terms of geographical distribution, distance education, or local arrangements.

(g) Specify the methods of evaluation.

(1) The notice of intent to provide training to specific groups of personnel under paragraph (a) of this section shall be published in a major newspaper of the State and such other public places as the State determines.

(2) The State shall conduct an evaluation of its program within 12 months of the notice being published.

(3) The results of the evaluation shall be provided to the Commission.

(4) The State shall provide a copy of the evaluation to the State educational agency.
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§ 121a-405 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-402-121a-403.
(b) Disagreements between a parent and a public agency regarding the availability of services and related services, and the question of financial responsibility, subject to the due process procedures under §§ 121a-500-121a-503 of Subpart E.

Handicapped Children in Private Schools Not Nominated or Referred by Public Agencies

§ 121a-451 Applicability of §§ 121a-451-121a-460.

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-403.

§ 121a-451 State educational agency responsibility.

The State educational agency shall ensure that:
(a) To the extent consistent with their number and location in the State, provisions are made for the participation of private school handicapped children in the program assisted or carried out under this part, by providing them with special education and related services;
(b) The other requirements in §§ 121a-452-121a-460 are met.

§ 121a-452 Local educational agency responsibility.
(a) Each local educational agency shall provide special education and related services to each private school handicapped child with genuine opportunities to participate in special education and related services consistent with the number of those children and their needs.
(b) Each local educational agency shall provide private school handicapped children with genuine opportunities to participate in special education and related services.

§ 121a-453 Determination of need, number of children, and types of services.

The needs of private school handicapped children, the number of them who will participate under this part, and the types of special education and related services which the local educational agency will provide for them must be determined after consultation with persons knowledgeable of the needs of these children in the local educational agency service area.
(d) Appeals for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be paid as public expense.

(5) Agency criteria. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria, which the public agency uses when it initiates an evaluation.

(20 U.S.C. 1415(b)(1)(A)).

§ 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 consent 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 procedures govern 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.504-121a.506 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 rights under §§ 121a.310-121a.315.


Comment. 1. 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 paragraphs (a) and the unannualized education program requirements in Subpart C.

2. Paragraph (c) means that where State law allows a parent refusal 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, determining that the public agency must conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures to establish what the parent considered to be a decision to allow the evaluation or services without parental consent. The agency must notify the parent of its action and the parent has appeal rights as well as rights at the hearing itself.

§ 121a.505 Content of notice.

(a) The notice under § 121a.506 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, text, 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.

(b) 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.

(c) 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 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 that the requirements in paragraphs (c) (1) and (2) of this section have been met.

(20 U.S.C. 1415(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.304 (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.

(20 U.S.C. 1414(b)(3)).

Comment. 'Many States have pointed to the section using mediation as an intervention 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 urge mediation in disputes concerning the identification, evaluation, and educational placement of a handicapped child, and the provision of a free appropriate public education to those children. Mediations have been conducted 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 delay or delay a parent's right to a hearing.'

§ 121a.507 Impartial hearing officers.

(a) A hearing may not be conducted:

(1) By 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 by the agency 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.

(20 U.S.C. 1414(b)(2)).

§ 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 problems of handicapped children;

(2) Present evidence and confront cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the party prior to 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 may submit those findings and decisions, after deleting any personally identifiable information, to the Regional Advisory Panel established under Subpart P.

(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.

(20 U.S.C. 1414(d)).

§ 121a.509 Hearing decision: Appeal.

A decision made in a hearing conducted under this subpart is final, unless
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§ 121a.515 Child's rights during proceedings.
(a) During the pendency of any administrative or judicial proceeding requiring 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.516 Surrogate parents.
(a) General. Each public agency shall ensure that the rights of a child are protected, where, as is the case when:
(1) Tests and other evaluation materials provided by the parent are used;
(2) 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 content.
(b) Tests are selected and administered so as best to ensure that, when 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 the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those

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skills are the factors which the test pur-
cports to measure):  
(d) No single procedure is used as the sole criterion for determining an appro-
riate educational program for a child:  
(e) The evaluation is made by a multi-
disciplinary team of at least one teacher or other 
spchos to work with children;  
(f) The child is assessed in all areas 
related to the suspected disability, in- 
cluding, among others, visual, auditory, social, emotional, general intelligence, academic performance, communicative skills, and motor abilities.  
(2) U.S.C. 1412(3) (C).  
(f) Any child who has a special impair-
ment or at least one teacher of such impairments and the child's parents shall 
be notified of all assessments made by individual teachers and the child's parents.  
(h) The disability assessment is 
conducted every three years or more 
fre-
ditional educational programs, to determine the 
performance, communicative skills, and 
the needs of handicapped children.  
(a) Each State educational agency shall 
provide that each public agency shall 
(i) Prepare and submit to the United States Department of Education a 
plan to improve the education of handicapped children.  
(j) The plan shall include the following:  
(a) the educational objectives to be achieved through the plan;  
(b) the specific procedures to be used in implementing the plan;  
(c) the expected results of the plan;  
(d) the evaluation to be made of the plan;  
(e) the funding necessary to implement the plan;  
(f) the extent to which the plan is consistent with the State's educational policies;  
(g) the extent to which the plan is consistent with the State's educational programs;  
(h) the extent to which the plan is consistent with the State's educational standards;  
(i) the extent to which the plan is consistent with the State's educational priorities;  
(j) the extent to which the plan is consistent with the State's educational resources;  
(k) the extent to which the plan is consistent with the State's educational needs.  
(2) U.S.C. 1416(b)(1) (C).  
§ 121a.551 Continuation of alternative 
place-
te (a) Each public agency shall assure that a continuation of alternative 
placement is available to meet the needs of handicapped children for special educa-
tional and related services;  
(b) The Continuation required under 
paragraph (a) of this section must:  
(1) Include the alternative placement 
provided in the definition of special education and related services under § 121a.517 of 
Subpart A in regular classes, special classes, special schools, and related services to the 
maximum extent appropriate to the needs of the handicapped child;  
(2) Include a statement of the basis for determining the placement;  
(3) Be in accordance with this section;  
(4) Include the extent to which the child's educational needs are met in the 
alternative placement.  
§ 121a.552 Phases of program (a) Each handicapped child's individualized educational program requires 
(a) The handicapped child shall be evaluated by the local educational agency prior to the 
(b) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(c) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(d) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(e) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(f) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(g) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
handicapped child.  
§ 121a.554 Evaluation of each 
handicapped child (a) Each State educational agency shall ensure that each handicapped child's individualized educational program is 
(b) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(c) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(d) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(e) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(f) The evaluation shall be conducted in a manner that is appropriate to the needs of the 
(g) The evaluation shall be conducted in a manner that is appropriate to the needs of the 

FEDERAL REGISTER, VOL. 48, NO. 169—TUESDAY, AUGUST 28, 1973
§ 121a.554 Notice to parents.
(b) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.129 of Subpart B, in substance:
(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 such agency, and the uses to be made of the information;
(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
(4) A description of all of the rights of parents and children regarding this information, including the rights under section 368 of the General Education Provisions Act and Part 98 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.
(20 U.S.C. 1412(8)(B))
§ 121a.556 Access rights.
(a) Each participating agency shall permit parents to inspect and review any education records relating to their children which are collected, maintained, and used under § 121a.550 of this subpart.
(b) The right to inspect and review education records under this section includes:
(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and
(3) The right to have a representative of the parents inspect and review the records.
(20 U.S.C. 1412(8)(B))
§ 121a.560 Definition of information.
As used in this subpart: "information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
"Education records" means the type of records covered under the definition of "education records" in Part 99 of this title (the regulations implementing the Family Educational Rights and Privacy Act of 1974).
"Participating agency" means any agency that collects, maintains, or uses personally identifiable information, or from which such information is obtained, under this part.
(20 U.S.C. 1412(8)(B))
§ 121a.561 Notice to parents.
(a) (1) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.129 of Subpart B, in substance:
(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 such agency, and the uses to be made of the information;
(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
(4) A description of all of the rights of parents and children regarding this information, including the rights under section 368 of the General Education Provisions Act and Part 98 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.
(20 U.S.C. 1412(8)(B))
(2) The right to inspect and review education records under this section includes:
(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
(2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and
(3) The right to have a representative of the parents inspect and review the records.
(c) An agency may decline to provide such notices if it determines that the parent does not have the authority under applicable State law covering such matters as guardianship, separation, and divorce.
(20 U.S.C. 1412(8)(B))
§ 121a.563 Records of access.
Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part collected, access by parents and authorized employees of the participating agency, including the names of the party, the date access was given, and the purpose for which the record was made.
(20 U.S.C. 1412(8)(B))
§ 121a.564 Records on more than one child.
If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.
(20 U.S.C. 1412(8)(B))
§ 121a.565 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 by the agency.
(20 U.S.C. 1412(8)(B))
§ 121a.566 Fee.
(a) A participating education agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from accessing the right to inspect and review those records.
(b) A participating education agency may not charge a fee to search for or to retrieve information under this part.
(20 U.S.C. 1412(8)(B))
§ 121a.567 Amendment of records at parents' 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 agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
(c) If the agency decides to refuse to amend the information in accordance with the request the agency shall inform the parent of the refusal, and advise the parent of the right to a hearing under § 121a.568.
(20 U.S.C. 1412(8)(B))
§ 121a.568 Opportunity for a hearing.
The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading,
or otherwise in violation of the privacy or other rights of such child, 20 USC 1412(b)(3); 1417(c).
§ 121a.569 Notice 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 informs the parent or guardian.
(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 correct the information accordingly and so informs the parent or guardian.
§ 121a.570 Deception of information.
(a) The public agency shall inform parents when personally identifiable information has been obtained or used, and when the child is under this part, is no longer needed, to provide educational services to the child.
(b) The information must be destroyed at the request of the parent. However, a permanent record of a student's name, address, and phone number, and her grades, attendance record, grade level, and year completed may be maintained without time limitation.
§ 121a.571 Hearing procedures.
(a) A hearing held under 121a.548 of this subpart must be conducted in accordance with § 121a.547 of this subpart.
(b) The State educational agency shall include policies and procedures in its program plan regarding the issues to which conferrals are afforded such as attendance, grade level, and year completed, and that the requirements of the Act and regulations in this part are met.
§ 121a.572 Safeguards.
(a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
(b) One officer at each participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.
(c) All persons collecting or using personally identifiable information shall receive training or instruction regarding the State's policies and procedures under § 121a.579 of Subpart B and Part 99 of this title.
(d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employed within the agency who may have access to personally identifiable information.
§ 121a.573 Office of Education.
(a) The Office of Education at its authorized representatives shall collect any information regarding handicapped children which is not subject to 20 USC 5362 of the Privacy Act of 1974; the Commissioner shall apply the requirements of 20 USC section 532(a)(1-27). (45 FR 1413-1417)
§ 121a.574 Initial decisions.
(a) The Hearing Panel shall prepare a decision on the record in which the findings of fact and the conclusions based on those facts.
(b) The Hearing Panel shall mail a copy of the initial decision to each party in the case, the Superintendent, and to the Commissioner, with a notice that each
party has an opportunity to submit written comments or appear at a hearing on the Commissioner within a specified reasonable time.

d) Review by the Commissioner is based on the record, the written record, if any, of the Hearing Panel's proceedings, and written comments or oral arguments by the parties.

1) No decision under this section becomes effective until it is served on the State educational agency or its attorney.

20 U.S.C. 1232a(e)(1): 1416(a)(8); (b): 1416(8):

§ 121A.589 Waiver of requirement regarding appropriations and supplemental funding with Part B funds.

(a) Under sections 611(a)(9)(B) and 614(a)(2)(B)(i) 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 adequate to supplement these State and local funds. Beginning with funds appropriated for the current fiscal year and for each following fiscal year, the nonsupplementing requirement is to be revised and reported to the Commissioner for local educational agencies. (See § 121A.373.)

(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 sections 613(a)(9)(B) and 614(a)(2)(B)(i) of the Act if 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 then provides the State with a finance and membership report form which provides the framework for the request.

(d) In the request for a waiver, the State shall include the results of a special study made by the State to obtain evidence of the existence of a free appropriate public education to all handicapped children. The special study must include statements by representatives 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 costs to parents, if any, for education of children enrolled in public and private day schools, and in public and private residential schools and institutions.

3) The adequacy of the State's due process procedures.

4) 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 in special programs in the previous school year.

3) The Commissioner considers the information which the State provides under paragraph (d) and (e) of this section, and any additional information he may request, or obtain through on-site reviews of the State's educational programs and records, to determine if all handicapped children have available to them a free appropriate public education, and if so, the extent of the waiver.

4) The State may request a hearing under § 121A.589-121A.585 with regard to any final decision by the Commissioner under this section.

(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.

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.

3) If the Commissioner withholds payments under paragraph (b) of this section he may determine:

1) That withholdings is limited to programs or projects under the annual program plan, or portions of it, affected by the failure.

2) That the State educational agency must not make further payments under Part B of the Act to specified local educational agencies affected by the failure.

§ 121A.591 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.580(a).

(a) No further payments shall be made to the State under this part or under the Federal programs specified in § 121A.580(a) of the Act 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.

(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.592 Public notice by State and local educational agencies.

Any State educational agency and local educational agency which receives a notice under § 121A.580(a) shall by means of a public notice, take any necessary measures to inform the public within the agency's jurisdiction of the pending of the action.

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

§ 121A.593 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 § 121A.583 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.600 Responsibility for all educational programs.

(a) The State educational agency is responsible for insuring:

1) That the requirements of this part are carried out;

2) That each educational program for handicapped children administered within the State, including each program administered by any other public agency.

(b) It is under the general supervision of the persons responsible for educational programs for handicapped children in the State educational agency, and

(c) Meets education standards of the State educational agency (excluding the requirements of this part).

(b) The State must comply with paragraphs (a) of this section through State statutes. State regulations, signed agreement between respective agency officials, or other documents. (See § 121A.609.)

Comment. The requirement in § 121A.600(b) is in effect automatically without the need
tion (§212.01) of the statute and reflect the decision 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 point of responsibility with regard to the education of handicapped children, and to assure that in the implementation of all provisions of this Act and in carrying out the right to education for handicapped children, 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, on the educational level, and on the type of services required. While the Congress understands that different agencies perform very different services, the responsibility must remain in a central agency overseeing the education of handicapped children, so that teacher education of lay social services or the evaluation of the rights of handicapped children is squarely the responsibility of one agency. Senate Report No. 94-148, p. 30 (1975).

In meeting the requirements of this section, there are a number of acceptable options which may be adopted, including the following:

(a) State-agency agreements are developed between respective State agencies concerning State educational agency standards and monitoring. This approach would require establishing a mechanism for the State and local or regional counterparts of each agency.

(b) The Governor’s office issues an administrative directive establishing the State educational agency responsibility.

(c) The Department of Health, Education, and Welfare (now the Department of Education) designates the State educational agency as responsible for random sampling procedures for all educational programs for handicapped children, and includes responsibility for monitoring.

(d) State law may use that the State educational agency is responsible for educational programs for handicapped children.

§ 121A.602 Adoptions of complaint procedures
(a) Each State educational agency shall adopt effective procedures for reviewing, investigating, and acting on any allegations of inadequacies, which may be made by public agencies, or private individuals, or organizations, of actions taken by any public agency that are contrary to the requirements of this part.

(b) In carrying out the requirements in paragraph (a) of this section, the State educational agency shall:

(1) Designate specific individuals within the agency who are responsible for implementing this requirement.

(2) Provide for investigations, technical assistance activities, and other remedial actions to achieve compliance, and

(3) Provide for the use of sanctions, including the withholding of Part B funds in accordance with §121A.605.

§ 121A.605 Use of Funds
(a) 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 greater, for administrative costs related to carrying out sections 612 and 613 of the Act; however, this amount cannot be greater than the amount with which the State may use under §121A.704 of the Act, as may be.

(b) Federal funds for local educational agencies.

(1) Administration of the annual program plan services as required at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children.

(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 education services for handicapped children.

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under §121A.605 in accordance with §121A.707 of this part.

§ 121A.611 Accountable costs.
(a) The State educational agency may use funds under §121A.605 of this part for:

(1) Administration of the annual program plan services as required at the State level, including planning, or assisting in the planning, of programs or projects for the education of handicapped children.

(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 education services for handicapped children.

(5) Other State leadership activities and consultative services.

(b) The State educational agency shall use the remainder of its funds under §121A.605 in accordance with §121A.707 of this part.

§ 121A.614 Reports.
(a) Each State shall establish, in accordance with the provisions of this part, a State advisory panel on the education of handicapped children.

(b) The State advisory panel shall:

(1) Advise the State educational agency of needs within the State in the education of handicapped children.

(2) Advise the State educational agency of needs within the State in the education of handicapped children.

(3) Evaluate the State educational agency's plans and policies with respect to the education of handicapped children.
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.
(30 U.S.C. 1416(a)(1))
§ 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.
(30 U.S.C. 1416(a)(1))
Subpart C—Allocation of Funds: Reports and Allocations
§ 121a.700 Special definition of the term States.
For the purposes of § 121a.701, § 121a.702, and § 121a.704—121a.706, the term "States" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.
(30 U.S.C. 1416(b)(3))
§ 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 of handicapped children aged three through 21 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 any fiscal year is—
(1) 1978—3 percent.
(2) 1979—10 percent.
(3) 1980—20 percent.
(4) 1981—30 percent.
(5) 1982, and for each fiscal year after 1982, 50 percent.
(30 U.S.C. 1412(a)(1))
§ 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
(3) Handicapped children who are counted under paragraph 121a.701(a) of the Elementary and Secondary Education Act of 1965.
(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.
(30 U.S.C. 1412(a)(9))
§ 121a.705 Re programming.
(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 prorated 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.
(30 U.S.C. 1412(g)(1))
(b) Reporting dates for local educational agencies and reprogrammings.
(1) In any fiscal year in which the State entitlements have been prorated reduced, and in which additional funds have not been made available to pay in full the total of the amounts under paragraph (a) of this section, the State educational agency shall fix dates before which it will exercise the prorating and reprogramming authority provided in §§ 121a.705 and 121a.706.
(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 need and be able to use additional funds to carry out approved programs.
(30 U.S.C. 1412(g)(2))
§ 121a.706 Post harmless provision.
No State shall receive less than the amount it received under Part B of the Act for fiscal year 1977.
(30 U.S.C. 1412(a)(1))
Of the funds received under § 121a.701 by any State for fiscal year 1978, the Commissioner may not use the State in accordance with the provisions of 121a.620 of Subpart F and 121a.370 of Subpart C, and
(b) 30 percent shall be distributed to local educational agencies in the State in accordance with § 121a.707.
(30 U.S.C. 1412(b)(1))
Of the funds received under § 121a.701 by any State for fiscal year 1979, and for each fiscal year after fiscal year 1979, the Commissioner may not use the State in accordance with § 121a.620 of Subpart F and § 121a.370 of Subpart C, and
(2) 25 percent may be used by the State in accordance with § 121a.620 of Subpart F and § 121a.370 of Subpart C, and
(b) 25 percent shall be distributed to the local educational agencies in the State in accordance with § 121a.707.
(30 U.S.C. 1412(c)(1))
§ 121a.707 Local educational agency entitlements formula.
From the total amount of funds available to all local educational agencies in each local educational agency is entitled to an amount which bears the same ratio to the total amount as the number of handicapped children aged three through 21 in that agency who are receiving special education and related services or the number of all children aged three through 21 receiving special education and related services in all local educational agencies which apply to the State educational agency for funds under Part B of the Act.
(30 U.S.C. 1412(d))
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§ 121a.700 Reimbursable local educational agency funds.

If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all handicapped children residing in the area served by the local agency with State and local funds otherwise available to the local agency, the State educational agency may reimburse funds on portions of those funds which are not required to provide special education and related services to all handicapped children residing in the area served by the other local educational agencies.

(20 U.S.C. 1444(a).)

§ 121a.706 Payments to Secretary of Interior.

(a) The Commissioner is authorized to make payments to the Secretary of the Interior according to the need for that assistance for the education of handicapped children on reservations serviced by the Bureau of Indian Education.

(b) The amount of those payments for any fiscal year shall not exceed one per cent of the total amount reimbursed to all States for their fiscal year under Part B of the Act.

(20 U.S.C. 1116(D)(3)).

§ 121a.7123 Determination by jurisdiction.

(a) The jurisdiction to which this section applies are Census, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(b) Each jurisdiction under paragraph (a) of this section is entitled to make a determination of the purposes set forth in section 601 of the Act. The amount to which those purposes are to be attributed for any fiscal year shall not exceed one percent of the aggregate of the amounts available to all States under this part for that fiscal year.

(c) The determination made by the State or other jurisdiction shall be based upon the annual rate of the average age group of children served in the jurisdiction.

(d) The amount so determined shall be received by the State or other jurisdiction as a reimbursement for the purposes specified in section 601 of the Act.

(e) Each jurisdiction shall report to the Commissioner the amount so received.

(20 U.S.C. 1411(1)).

§ 121a.7124 Annual report of children served—report requirements.

The State educational agency shall report to the Commissioner the number of handicapped children served in each program and the number of those children who are receiving special education and related services.

(20 U.S.C. 1411(a)).

§ 121a.7125 Annual report of children served—criteria for child services.

(a) The State educational agency may include handicapped children in its reports who are enrolled in a school or program which is operated or supported by a public agency, and which either:

(1) Provides them with both special education and related services;

(2) Provides them only with special education if they do not need related services to enable them to benefit from special education;

(b) The State educational agency may not include handicapped children in the report who are enrolled in an institution or in a program operated or supported by a public agency, and which:

(1) Are not enrolled in a school or program operated or supported by a public agency;

(2) Are not provided special education that meets State standards;

(3) Are not provided with a related service that they need to benefit from special education;

(c) The reports issued by the Department of Education under section 112(a) of the Elementary and Secondary Education Act of 1965, as amended, shall include:

(d) The State educational agency shall provide children covered under 20 U.S.C. 1411(a) of Subpart B.

(20 U.S.C. 1416(3), 1416(1)).

Comment. Under paragraph (a), the boundary between irreducible and other special education and related services shall be based upon the existence of a related service that the child needs to benefit from the special education and related services.

§ 121a.7128 Annual report of children served—certification. The State educational agency shall include in its reports a certification signed by an authorized official of the agency that the information provided is accurate and unobstructed and that the number of handicapped children receiving such educational and related services is the same as in the previous report.

(20 U.S.C. 1411(1)).
RULES AND REGULATIONS

The BSA requires a few appropriate regulations to be promulgated in the near future to provide for the establishment of the Boad of Auditors of the BSA. The regulations will ensure that the Board of Auditors is independent and that its decisions are unbiased. The regulations will also provide for the appointment of auditors and the conduct of audits.

The Board of Auditors will be responsible for reviewing the financial statements of the BSA and ensuring that they are accurate and complete. The Board will also be responsible for preparing reports on the financial performance of the BSA.

The regulations will be published in the Federal Register and will be available for public review. Comments on the regulations are welcomed and should be submitted to the Board of Auditors at 123 Main Street, Anytown, USA.

The regulations will take effect on January 1, 2023, and will apply to all BSA members.

The BSA Board of Directors.

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**Appendix A---Analysis of Final Rulemaking**

(46 C.F.R. Part 1216) Order of the BSA Board of Directors

These regulations are not required to be included in the annual report of the regulations as required by 5 U.S.C. 807(b).

In order to ensure that the regulations are effective, the BSA Board of Directors has reviewed the regulations and found them to be necessary and appropriate. The regulations have been drafted to be as concise and clear as possible.

The regulations are intended to provide guidance to BSA members on the proper conduct of audits and the preparation of financial statements.

The regulations will be reviewed periodically to ensure their continued relevance and effectiveness.

**Appendix B---Regulations Under 1216.5**

The regulations under section 504 of the Rehabilitation Act of 1973 (42 U.S.C. Part 5c) are published as 42 FR 20797, May 4, 1977. The regulations cover the needs of handicapped persons in the areas of vocational rehabilitation, educational services, and equal employment opportunity. The regulations provide for the appointment of a National Council on the Arts and Humanities, which is responsible for the administration of the regulations.

The regulations also provide for the appointment of a National Council on Disability, which is responsible for the administration of the Rehabilitation Act.

The regulations are intended to ensure that people with disabilities have equal access to educational and vocational opportunities.

**Appendix C---Recommendations for Compliance**

The recommendations are based on the best available evidence and are designed to ensure compliance with the regulations. The recommendations include:

- Providing training to auditors and BSA members on the regulations.
- Developing a system for tracking the progress of audits.
- Providing feedback to auditors and BSA members on the results of audits.

The recommendations are intended to help BSA members to comply with the regulations and to ensure that the regulations are effective.

The recommendations will be reviewed periodically to ensure their continued relevance and effectiveness.

**Appendix D---Definition of Terms**

The definitions of terms used in the regulations are taken from generally accepted definitions in the field.

The definitions are intended to ensure that the meaning of terms is clear and consistent.

The definitions will be reviewed periodically to ensure their continued relevance and effectiveness.
referring to the qualifications of the various positions.

The definitions of "handicapped children" has been modified only by making certain clarifying changes. Although some commenters requested additional changes in the definitions of the various disability categories, it is felt that the definitions in this regulation, unless closely monitored to current usage in the States and professions,

The regulations contained in Subpart B have been expanded to include "school health services." In addition, changes were made in the definitions of the interventions used under "medical services" (e.g., psychological services and recreation) to conform to recommendations of professional associations.

SUBPART B--STATE APTURAL PROGRAM PLANS AND LOCAL APPLICATIONS

Subpart B includes the requirements relating to State annual program plans, local educational agency applications, participation by the Bureau of Indian Affairs, and public participation.

Two new sections (sections 316.115 and 316.116) were added to the previous regulations of the Indian Education Act of 1972, and the regulations in Subpart B will be applied in conformance with the section 306 regulations, including the requirements under sections 316.115 and 316.116 of the Education of the Handicapped Act regarding membership or qualification of handicapped individuals in programs assisted under the Act. The Office of Civil Rights has been designated authority for enforcing section 306.

A critical number of commenters were concerned with the following major issues in the new regulations: (1) the definition of a "handicapped child" required of State and local educational agencies; (2) the definition of a "handicapped child" used in the public participation section; and (3) the definition of the programs in the regulation. In addition, as with other subparts, many commenters objected to statutory requirements and the administrative regulations.

APPENDIX A

ASSISTANCE UNDER THE SMSA (§ 316.118)

Section 316.118 of the General Education Provisions Act (GEPA), as amended by Pub. L. No. 93-380, includes the following requirements for each Office of Education program under which funds are provided to local educational agencies for schools for the education of handicapped children: (1) the Office of Education shall make available to local educational agencies a copy of the regulations under which funds are to be used; (2) the regulations shall be approved by the State educational agency; (3) the regulations shall be written by the State educational agency; (4) the regulations shall include a statement of the requirements for which Federal funds are to be used; (5) the regulations shall include a statement of the procedures by which the Office of Education is to be informed of changes in the regulations; (6) the regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations; (7) the regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations; and (8) the regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations.

The Office of Education is proposing to use the manual July 1, 1978, for State annual program plans in those programs where appropriate requirements are designed to be used for school year 1978-1979. The purpose of this is to meet the statutory requirement for an annual program plan covering a 12-month period and at the same time to conform as closely as possible to the regulations as written. This is to be accomplished by the Office of Education. The regulations under which funds are to be used shall be approved by the State educational agency. The regulations shall be written by the State educational agency. The regulations shall include a statement of the requirements for which Federal funds are to be used. The regulations shall include a statement of the procedures by which the Office of Education is to be informed of changes in the regulations. The regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations. The regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations. The regulations shall include a statement of the procedures by which local educational agencies are to be informed of changes in the regulations.
RULES AND REGULATIONS

Part B. The requirement for local educational agencies to be consistent with the annual program plan is not firm in section 112.136.

Apparent source of controversy on inconsistency of purposes specified in annual program plan to those specified in the federal funding priority statement.

These sections have been rewritten to clarify the general priorities by the Secretary of the Interior (for schools operated for Indian children) must meet the applicable requirements of section 112.136(a), including the following material as agreed to by the Commissioner and the Secretary of the Interior, and have been adopted and published public participation requirements.

PUBLIC PARTICIPATION

See the comments on Sections 112.130.

Support C—Services

Support C supports the programs governing the major services component required under Part B, provides for a limited program and services, and establishes procedures for the purpose of Part B and in this section, Part B programs and services that are required to be consistent with the program and services in the annual program plan.

Program Planning and Public Participation

(1) A new paragraph has been added to section 112.130 which states: "The requirements in this part must be consistent with the annual program plan in Part B of the Act." These changes have been made to ensure consistency with Part B of the Act and a limited program and services that are required to be consistent with the program and services in the annual program plan.

(2) Support A has been changed to indicate that the requirements in this part must be consistent with the annual program plan in Part B of the Act. These changes have been made to ensure consistency with Part B of the Act and a limited program and services that are required to be consistent with the program and services in the annual program plan.

Alarm: The new Paragraph 112.130 has been added, reporting "the proposed public hearing on a special subject conducted by the Office of Education.[Note: This section does not appear in the text of the proposed program and services that are required to be consistent with the program and services in the annual program plan."
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Priorities (§ 11.6.230)

Comments: Many comments were concerned that first priority service areas must be used for inservice training for personnel who can serve these students, and stated that such inservice training services may be an essential component toward achieving the first priority.

Responses: The proposed rules have been revised to ensure compliance with the above concerns. A new section was added to make it clear that an agency may use Part B funds for inservice training concurrently with placing a first priority child in an inservice program if the component of the child's program is missing. However, the provisions of inservice training may not be used as a pre-condition for service to the child.

The intent of Congress with respect to the education of first priority children is being addressed by the addition of a new section to Part B, Subpart C (§ 11.6.230) and very clear, as reflected in the following statements:

(1) The Congress has a responsibility to the children's health - to make sure that all persons are assured equal opportunity. For handicapped children, this means, as very clear, that "these funds must be used in such a way that we are assured that handicapped children are provided their right to education." (Congressional Record—Senate, June 18, 1977, p. 61096)

(2) "First priority for spending under the legislation is to provide services for handicapped children who are not now being served. The Senate approach in the Conference Report with respect to the current fiscal year, fiscal year 1977 and fiscal year 1978 will allow for allocation of moneys for this priority can be met." (Congressional Record—House of Representatives, November 15, 1977, p. 120348).

(3) "There are millions of children with handicapping 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 service at all. Of all first, we must try to reach those with the most severe handicaps who have traditionally been the most neglected with the highest quality of services."

(4) "The legislative language requires that first priority is to be given to those children who are not being served and who are in the highest priority category." (Congressional Record—Senate, June 18, 1977, p. 61096).

Conversely: Several comments recommended clarification regarding whether the requirements on the use of funds for priorities apply within or among local educational agencies (e.g., special medical services for children with low vision, etc.) or among several agencies (e.g., a hospital, a local educational agency, and a mental health agency). It was stated that the provisions applied to only those services which are not serving all of its first priority students but to another agency to which is not serving all of its first priority students and not to the same agency to which is serving all of its first priority students, which is being followed by public agencies in meeting the above principles.

Participants in IEP meetings (§ 11.6.241)

Conversely: Several comments recommended that personnel from specific disciplines be participants at IEP meetings (e.g., physicians, health care personnel, and representatives from private agencies). However, it was stated that the provisions applied to only those services which are not serving all of its first priority students but to another agency to which is not serving all of its first priority students and not to the same agency to which is serving all of its first priority students, which is being followed by public agencies in meeting the above principles.

Disability Evaluation Program

The requirements on individualized education programs in Subpart C (§ 11.6.230) as they were rewritten and renumbered substantially, based largely on comments received. (These sections have been renumbered, starting with section 11.6.230.) A summary of these changes is included below:

(1) A definition of IEP has been added which states that the term "IEP" means a written statement of the handicapped child that is developed and implemented in accordance with sections 112.6.230 through 112.6.236 of Subpart C.

(2) The proposed section entitled, "Scopes" has been deleted and renumbered with the section on "State educational accountability responsibility." (§ 11.6.230)

(3) The proposed section on "Local educational agency responsibility" has been replaced by two new sections ("When IEPs must be in effect" and "Monitoring")

(4) The section on "Participation in meetings" has been restructured to adopt essentially the language in the Act and to add a new paragraph on participation of evaluation personnel.

(5) The proposed section on "Parent participation" has been amended to include specific provisions regarding notifying parents of meetings.

(6) The section on "IEP accountability" has been replaced with the statutory language.

Trends in IEP meetings (§ 11.6.241)

Conversely: Many comments felt that the final rules should provide more flexibility to local educational agencies as time passes.

Responses: The following changes were made in the proposed rules in an attempt to meet such recommendations: The definitions now specify the dates on which IEPs must be in effect (October 1, 1977, and the beginning of each school year thereafter). Second, except for new handicapped children in Part B (Subpart C, § 11.6.230), the meeting required for the development of an IEP must be held within 30 days of the determination that the child is not expected to progress in the regular education program.

The regulations are final and can be followed by public agencies in meeting the above principles.
very costly and could essentially defeat the purpose of insuring active, open parental in- 
volvement.

While it is necessary to insure that all direct services personnel will be informed about and involved in implementing the child's IEP, it does not mean that they should attend the IEP meetings. The mechanism for insuring the involvement of all IEP implementers is left to the discretion of each agency (e.g., the child's teacher, or parent, or supervisor) and can include any combination of the following: placing the child in a state-approved inservice training program; allowing the teacher to attend IEP meetings; allowing the teacher to attend inservice meetings; or any other means the agency finds appropriate. However, it is the intent of Congress that IEP meetings generally be attended by the other personnel involved in implementing the child's IEP, and we discuss this very much as we drafted the legislation.

Comment: Some commenters recommended that members of the evaluation team participate in IEP meetings.

Response: A new paragraph has been added to section 300.136 which permits all special education personnel and parents to participate, subject to agreements on agenda items.

Comment: Several commenters recom- 
mended that the representatives of the agency to be involved in the disability area in which the child's IEP is written be invited to IEP meetings. 

Response: A new paragraph has been added following section 300.136 which requires that the providers for the child be involved in the development of the IEP.

Comment: A comment has been added fol- 
lowing section 300.136 which states that the IEP must not be delayed.

Response: A new paragraph has been added following section 300.136 which states that the IEP must be completed within 30 days of the initial meeting.

Comment: Several commenters recom-
mended that the representatives of the agency to be involved in the disability area in which the child's IEP is written be involved in the development of the IEP.

Response: A new paragraph has been added following section 300.136 which requires that the representatives of the agency to be involved in the development of the IEP be informed of the program for the child.

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Response: A new paragraph has been added following section 300.136 which states that the representatives of the agency to be involved in the development of the IEP must be involved in the development of the IEP.
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DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY

The direct services provisions of this subpart includes sections on: (1) use of local educational agency (LEA) funds, (2) nature, location, and use of local educational agency's (LEA's) entitlement, and (3) a State matching requirement, i.e., the comprehensive system of personnel development (CSPD) may provide special education and related services personnel.

A new paragraph (g) has been added, which repeals the section requirement that the access cost requirement does not apply to State educational agencies.

Section 311A.305 (Necessity and location of services) has been amended to correct an error made in the proposed rule. The proposed regulation stated that the local educational agency (LEA) may provide special education and related services personnel.

The regulation on "State matching" was not substantially changed. However, a comment was added after this section to make it clear that the requirement would be modified, because the amount of State funds received on each program would be based on the amount of Federal funds in that program area.

Comment: In the provisions to the proposed rule under the direct services provisions, point made more than one LEA would not be in a position to provide the services to all of its handicapped children. A comment in reply to this point, pointed out that the terms "handicapped children" under section 304 and Pub. L. 94-142 and, therefore, an FSEP provision that it has to meet the requirements of Pub. L. 94-142 are sufficient to cover this section 304.

Under Part B, "PAF" is a category term which requires services to be provided for this program. However, under section 304 regulations, each requirement must provide an extension which indicates "an educational program for individuals with mental retardation for non-handicapped persons are met". Therefore, the states that implement an FSEP in accordance with Part B, is consistent with the "PAF" requirement.

FOOTNOTE: A more detailed presentation of the relationship between section 304 and Pub. L. 94-142 is included in this appendix.

Other changes: A new section 311A.376 has been added in implement section 311A.14 of the Act. This section provides that the implementing regulations do not apply to the States' expenditure of its allotted funds, beginning with funds appropriated for the fiscal year 1978 and for each following fiscal year.

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

General

The proposed rules in this section created some controversy over the amount of detail contained in the regulations. Comments ranged from requests for more specificity to suggestions that everything be deleted except the statutory language. The manner in which the proposed "comprehensive system of personnel development" be implemented in each State, this is a broad requirement, challenging the State to read out to the comprehensive community of agencies involved in preparing personnel to advance the handicapped, many of which are private and not under the control of the State, was felt that a regulation that would provide sufficient information for the State and involved agencies to understand their responsibilities in achieving compliance.

SCOPE OF SYSTEM: (§ 311A.201)

Comment: A commenter suggested that in-service education be made available to all special, regular, and related services personnel.

Response: Paragraph 3 of section 311A.206 was revised to state the intent to require that all personnel preparation services be conducted in accredited institutions granting advanced degrees, and that no more than ten percent of the money under this Act be used to establish that institution. A commenter recommended the earmarking of the funds for State and program development.

Response: No changes have been made in the regulations. The Office of Education believes that each State must have maximum latitude in decisions regarding the types of Form and personnel that are used to implement the comprehensive system of personnel development.

With respect to updating funds for training, the Office of Education was not sure that such a step would be inappropriate in this time. Part B is a unique Federal provision in that it imposes requirements on States which must be implemented regardless of the amount of Federal funds available. Given the broad and flexible nature of the law, the Office of Education believes that each State should have maximum latitude in terms of how the money is spent. It will be the responsibility of the State to implement the various necessary provisions, matters, of course, to the priority requirements in subpart C.

DEFINITION OF "APE" AND "ABE": (§ 311A.201)

A number of comments were received on the definition of "appropriately and adequately trained personnel" which is found in section 311A.291 of the proposed rule. This definition was discussed in the final regulations. Instead of the terminology used, as defined in 311A.12.

Comment: A commenter suggested that the "appropriately and adequately trained personnel" be made to suffice for the mobility of personnel.

Response: No change has been made. The intent of the Act is to have that act personnel necessary to carry out the purposes of the Act be qualified. The Act does not authorize the establishment of national certification standards.

Comment: A commenter suggested that every individual be required to be an area for certification.

Response: No change has been made. Those personnel must be included under the State's "comprehensive personnel development system".

Comment: Several commenters expressed the belief that certificates should not be required for all personnel directly serving the handicapped, or that such a requirement would result in great expense for the State. The comment was also that the "comprehensive personnel development system" should be used as opposed to the requirement for certification, registration, or approval.

Comment: The terminology "appropriately and adequately trained and certified" has been interpreted, by use of the word "should" to mean consultation, registration, or licensing. These are commonly accepted procedures for determining if personnel are appropriately and adequately prepared and trained.

PARTICIPATION OF OTHER GROUPS AND INTERESTS (§ 311A.309)

The comments on the areas and intensity of the programs and groups involved in this section ranged from the belief expressed that special instruction on components of the State plan are not required in the Act, whereas the "participation" equivalents in section 311A.251 should be significant, to the suggested requirement that organizations not only have an opportunity to participate, but that they "must participate." The commenter recommended that such a specialized aspect of the Act, necessitates involving agencies not under the jurisdiction of the States that "participate" and with an interest in the preparation of personnel for the education of the handicapped. The comment urged the State to encourage the development of quality personal preparation programs, a factor essential to the provision of a "true" appropriate public education.

Comment: Several commenters suggested that "representatives of each group be included in the process as well as to participate." One commenter suggested that disability categories should have an opportunity to comment and be active participants in the development of the program. The regulation has been altered to include representatives of handicapped and parent organizations. This wording should be expanded to other groups.

Comment: A commenter suggested the addition of a subsection (3) to section 311A.309 (a) that would require the State to prepare a plan to include a description of obligations and responsibilities with respect to research and evaluation of mechanisms that could be implemented in local education agencies.

Response: Sections 311A.385 and 1712A.395 have been inserted to classify agency responsibilities.

IMPLEMENTATION (§ 311A.509)

Comment: There was a number of contrasting points of view and suggestions on this section, ranging from requests to mandate greater detail in the proposed rules, to the suggestion that the section be deleted altogether. Those proposing greater detail suggested that specific knowledge and skills be emphasized and that the provisions be drafted in such a way that the States could be trained "by having them work one-to-one with specialists" and that "disability categories be long as the law permit". On the other hand, there were suggestions that were made available that the law be done
only in institutions of higher education with State approved programs.

On the other extreme, there were suggestions that the Act displace or remove State requirements and that the Act be made the exclusive source of financial aid in those cases.

In November 1969 the Regulations were presented to the Senate Committee on Appropriations and to the House Committee on Appropriations. These Committees have both taken a favorable view of these regulations and it is anticipated that they will be presented to Congress at an early date.

On the other hand, a number of Senators believe that the regulation as presented would provide too much administrative burden and that the standards set forth in the Act could be achieved by State action alone.

The comment period is now closed and the regulations will be published in the Federal Register in the near future. The Department is hopeful that all interested parties will take an active interest in the process by which these regulations are developed and by which they are used.
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DUE PROCESS PROCEEDINGS FOR PARENTS AND CHILDREN

REQUIREMENTS [1116.465]

Comment: Commenters recommended that the phrase "unless it is clearly not feasible to do so" be deleted from the definition of consent and that additional language be added to make it clear that consent may be revoked and may not be made a precondition to the child's right to participate in special educational programs. The absence of these changes in the phrase would be to require that a consent is not valid unless the parent is informed in every case of the information referred to in the consent.

Response: The phrase has been deleted. The deletion of the phrase will help to secure an informed consent in every case, and at least of the parent's language or other mode of communication. A parent's assertion to make it clear that parents have the right to revoke consent. A separate section 1116.465.38 a parental education experts that evaluations will be made in the public interest. Consent may be made a precondition to services. While public agencies may not necessarily be required to provide special educational evaluations or for initial placement, a public agency may not choose parents to consent by withholding or threatening to withhold other special education services or extracurricular activities unless the parent consents.

Comment: Several commenters requested changes in the definition of "evaluation" to make it clear that evaluations must be conducted by qualified personnel, that the findings must be reduced to writing and that the child must be able to attend school as well as school. No change has been made. The requirement regarding qualified personnel is already in the definition of "evaluation.

Response: The Office of Education expects that evaluations will be made in the public interest. Consent may be made a precondition to services. While public agencies may not necessarily be required to provide special educational evaluations or for initial placement, a public agency may not choose parents to consent by withholding or threatening to withhold other special education services or extracurricular activities unless the parent consents.

GENERAL RESPONSIBILITY OF PUBLIC AGENCIES [1116.466]

Comment: Commenters suggested that parents have the right to complain and that a parent should be reimbursed if they are to receive them outside of the context of a hearing.

Response: A parent's right to receive the regulations. However, agencies should normally seek to respond in writing to a complaint by informal electronic or written negotiations. An agency's written response may be made public if the agency believes the public interest is served.

INDEPENDENT EDUCATIONAL EVALUATION [1116.467]

Comment: Commenters disagreed as to whether the parent's right to an independent evaluation should be broadened or narrowed. A parent's right to receive an independent evaluation must be confirmed. Also, "public agencies" has been defined. However, the interpretation in the proposed regulations is retained. The evaluation must be at public expense if the parent disagrees with the evaluation by the public agency, unless the public agency initiates a hearing to show that its evaluation is appropriate. Instead, the price of the independent evaluation does not have to be borne by the agency. The independent evaluation must be considered in any hearing.

There are several competing interests which the regulation seeks to balance. The statutory right of the parent to an independent educational evaluation must be preserved. On the other hand, the public agency should not be asked to bear the costs of unnecessary expensive independent evaluations. Also, for the independent evaluation to be useful, it must meet the same criteria as evaluations conducted by public agencies under this part.

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members also asked that limits of hearing off-

Comment: A requirement has been added that each public agency keep a list of per-

s who serve as hearing officers and a state-

ment of their qualifications. This change is

Comment: Comments disagreed as to whether hearing rights set forth in the pro-

posed regulations are adequate. Among the additional rights sought were the right
to compel the attendance of witnesses, prohibit the exclusion of evidence not
disclosed prior to the hearing, allow the child to be present and the hearing to be open to the public at the parent's discretion, and to specify whether the record of the hearing
must be free or at reasonable cost.

Comment: Commenters have been urged to add rights for any party to prohibit the in-

clusion of statements not previously disclosed
to the other party under the child to be present and the hearing to be open to the public. The purpose of hearings under this part is to ensure that handicapped chil-
dren are provided the appropriate educational

Comment: No change has been made. The legislative history cited in subparagraph is a

Comment: A number of commenters saw clarification regarding the agency of

Comment: A number of commenters were concerned about the legal liability of sur-

Comment: A number of commenters suggested that the regulations provide more de-

Comment: The Office of Education believes reasonable notice to the student's par-

Comment: A number of commenters wanted clarification regarding what agency

Comment: A number of commenters wanted clarification of the 48-hour limit for commu-

Comment: The section has been revised to set a 48 day limit for a hearing and a

Comment: A comment was added to indicate that the Federal law prohibits

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Comment: The section has been revised to set a 48 hour limit for a hearing and a

Comment: The section has been revised to set a 48 hour limit for a hearing and a
RULES AND REGULATIONS

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of an individualized education program is the placement procedure. The following additional comments were made requesting evaluation procedures:

Comment: Several comments felt that the regulations should require State and local educational agencies to develop procedures for the selection of evaluations. This would make it possible to determine the adequacy of the evaluations and to insure uniformity in these procedures.

Response: A paragraph was added to section 121.300 (General) which requires the State educational agency to insure that each public agency establish, implement, and perform evaluation—placement procedures.

Comment: Several comments felt that unnecessary evaluation should be set for implementing the evaluation process (e.g., for initial referral to evaluation and placement).

Response: No change has been made. The Office of Education has decided to impose very few absolute timeliness in the regulations for this period, because of the potential for administrative and legal problems they could cause. Imposing timeliness can actually delay the provision of services (e.g., if the time periods are regarded as too minimal and minimum terms required 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 concern of the State and local educational agencies' compliance with sections 121.128 and 121.300 (identification and evaluation of all handicapped children)

Several comments requested clarifications regarding whether a reevaluation is required, as required by section 121.341; all, if the parents and agency agree that the child should be transferred from a special education program to a full time regular class placement.

Response: This section has been deleted in this proposed rule. However, changes in a child's placement (including a change to a regular class) may be made only after a meeting is held to review the child's individualized education program in accordance with the requirements under section 121.326 C. If the parents and agency agree that the child no longer needs special education, a reevaluation is required to determine whether the child should be transferred to another placement.

Comment: A paragraph was added to section 121.350 which requires the State to insure that all public agencies establish, implement, and perform evaluation and placement procedures in accordance with the requirements of this part. In addition, a new section, entitled "Noncompendium settings" was added. This section is taken from a new requirement in the section 300 regulations (42 C.F.R. Part 46, §426.2).

Comment: A number of commenters requested that provisions be made for special support in the regular classroom in order to accommodate handicapped children (e.g., individualized instruction at a slower rate and assigning aside to the room).

Response: No change was made, since the statute already authorizes the use of supplementary aids and services as a means of enabling a handicapped child to be educated with nonhandicapped children.

Comment: Many commenters responded to this requirement. Some felt that otherwise "accommodation" should be used (e.g., "range of programs" and "variety of services"). A large number of commenters felt that "accommodation" carried negative connotations (e.g., stagnation were made that the concept undermines the ideals of Pub. L. 94-142, that it implies best-be-toront, etc.). Other commenters felt that it discriminated against residential or private schools, and therefore alternative terms should be used to construct this term.

Response: No change has been made in this section. The term "accommodation," as used in various state and local regulations, is commonly used by agencies, advocates, and parents. However, there is nothing to prohibit an agency from using terms such as these included above in administering these provisions.

As with "LRE," the term that is used is not as important as the function it serves, and how this provision is implemented. The purpose of a LRE is that it be used to accommodate to differences between handicapped children in terms of degree of special education services; it is to remove the "false LRE" in the phrase the erroneous perception that the child is in a pool or an environment that is not one in which the child is placed in a regular classroom. The Committee understands the importance of the types of services to be provided to each handicapped child, to ensuring that there are benefits, that the services provided to the handicapped child are consistent with the requirements of the law, and that the special education services and placement of the handicapped child is appropriate to the child's unique needs.

Comment: Many commenters requested that the term "accommodation" be used in the regulations for the purpose of explaining the concept. The Committee recognizes that this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and the Committee recognizes that this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and this is not always the most beneficial of all the descriptions of instruction. A child should be classified as an educational backwardness because the child is in a regular classroom and this is not always the most beneficial of all the descriptions of instruction.

Comment: Many commenters were concerned that there may be an overextension of programs in regular education, which is the purpose of the above concern. With respect to these concerns, the overriding rule is that such child's placement must be determined実際にもやとし、基盤上は、主導的な教育プログラムが位置づけられている。
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(21)(C). Agencies may of course adopt policies of making copies available free of charge and be reimbursed for the cost of doing so.

SECTION 151.4875

Comment: A commenter requested clarification of who constitutes a hearing.

Response: The definition states that the procedures under 199.22 (the hearing procedures in the regulations for the Family Educational Rights and Privacy Act) specifically limit parties and witnesses whose records may be released without parental consent.

SECTION 151.497

Comment: 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 request has been modified to require a list of names and positions to more fully inform parents and the public of employees who may have access to data as well as the specific individuals who may have access.

SECTION 151.517

Comment: A number of commenters were concerned about the burden the requirement. The principle concern was that delayed responses would prevent schools from identifying individuals to show proof of need for further services from other agencies. One respondent suggested that for young children it would be beneficial to inform the parents if the child is not identified at the time of graduation. As long as they would be notified of the existence of the records at the time of graduation and informed that they would be destroyed only after receipt of the request or child. Another commenter suggested that the requirement be satisfied, 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 the destruction unless the parent requests otherwise. The notice would normally be given at the time of graduation because it involves the agency. The purpose of the destruction option is to assure that nonessential records are maintained accurately and that, which may possibly be significant, that the system is not maintained forever. As long as they are no longer needed for educational purposes. Destruction of these records is the best protection against improper or unauthorized disclosure. However, the handicapped child or his or her parents may need certain records for other purposes (such as proof of eligibility for benefits). The response is that the notice will be given to a child who has reached the age of majority.

Comment: A change has been made. Section 151.497 requires the State educational agency to have policies and procedures regarding children's privacy. These education 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 the age of 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 repeat the statute. Perhaps for this reason, few comments were received on the Office of Education procedures.

SECTION 151.499

Comment: A commenter requested that the special study to determine if a waiver of the requirement should be granted include a review of whether grievance procedures are operational. The commenter disagreed on the need for this study.

Response: A requirement has been added to have the study cover the adequacy of the State's due process procedures. As this is an important part of the process that grievances are heard and to determine if parents or other persons involved with the adequacy of the State's programs for handicapped children.

WITTENBURG PATIENTS (151.500)

Comment: A commenter asked for definitions of "substantial compliance" and "fail to comply." Commenter also argues that the "Office of Education, the Office for Civil Rights, and each State Department of Education shall administer to the State's programs for handicapped children.

SECTION 151.505

Comment: No change has been made. The statute only requires a State advisory panel. A State may, of course, decide to establish local panels.

Comment: One commenter recommended that the State 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.

MEASUREMENT (151.601)

Comment: A substantial number of commenters recommended that the term "representatives of the students" be included in the panel. This would include professional groups, legal advocacy groups, and employees 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 make it clear that a State may expand the advisory panel to include additional persons in the procedure, policy, and representatives of other groups. The Office of State Education Agency Responsibilities has been added (151.601) to better summarize the statutory provisions and principles. The purpose is to ensure that nonessential records are maintained accurately and that, which may possibly be significant, that the system is not maintained forever. As long as they are no longer needed for educational purposes. Destruction of these records is the best protection against improper or unauthorized disclosure. However, the handicapped child or his or her parents may need certain records for other purposes (such as proof of eligibility for benefits). The response is that the notice will be given to a child who has reached the age of majority.

Comment: A change has been made. Section 151.497 requires the State educational agency to have policies and procedures regarding children's privacy. These education 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 the age of 18 or the post-secondary education level.

Comment: Other changes include 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 repeat the statute. Perhaps for this reason, few comments were received on the Office of Education procedures.
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Comment: Commentators requested the regulations provide that panel members must be reimbursed for reasonable and necessary expenses for attending meetings and performing duties.

Response: This change has been made. It is reasonable to require reimbursement for expenses so that persons will be able to participate without financial restraints.

SUBPART O—ALLOCATION OF FEDERAL FUNDS REPORTS

This major section of Subpart O is entirely statutory; therefore, there are no comments or modifications which it requires.

REPORTS—ANNUAL REPORT OF CHALLENGES

The following comments were received regarding the annual report of the States of the number of children receiving special education or other programs: None were made to the regulations for each State's allocation of funds under Parts X and Z and serve as mechanisms for the Commission to meet some of its reporting requirements to Congress under section 616 of the Act. Some commenters recommended changes to make the annual report more meaningful. The Act has not been summarized except where further explanation seemed to be useful.

AMOUNT OF INFORMATION REQUIRED

COMMENTS TO THE REPORT

Comment: Commentators varied in their views on what information should be included in the report. It was suggested that additional information may be collected for compliance purposes. Objectives were made to the regulation reporting special education for handicapped and nonhandicapped children.

Handicapped: Two categories of handicapped children have been added to the regulations for the reporting of handicapped children. These terms are defined in section 1116(b) of Subpart O. No other changes have been made on the amounts of information to be included.

The additional categories should help to ensure that no handicapped child is counted more than once in the same year. The regulations for reporting handicapped children are a summary of the child's unique needs. The changes conform to existing reporting requirements used by the States.

The annual report of children is not a complete guide, but is needed to determine each State's allocation and to ensure compliance. In meeting his reporting requirements to the Congress under section 616, a State's allocations should be based on the number of handicapped children served by State programs. Special education and related services. Compliance with requirements such as "last resort determinations" will be achieved through other mechanisms, indicating the State's annual program plan, the local educational agency's application, and monitoring by the State educational agency and the Office of Education.

As expressed in the preamble to the proposed rule published in the Federal Register, on September 7, 1976, the report requires the Commission to report to the Congress on the Act, these regulations do not require the Commissioner to report a substantial amount of information to Congress by disability category. For this reason, and for the other reasons stated in the September 8, 1976, Federal Register, there appears to be no workable alternative to reporting the categories in the State annual report. The various disability categories, as well as any requirements on services that are subject to the Commissioner's report to the Congress, are statutory.

WHO MAY BE COVERED

Comment: Commentators disagreed as to whether handicapped children should be counted if the educational services are provided mainly by private services or services by Federal funds (such as children living on military bases). Some thought that only publicly-funded special education should qualify. While others argued that since all children have a right to a free appropriate public education (whatever the parent or the person) should not matter.

It has been attempted to provide that handicapped children (including such children in training or other preschool programs) may be counted only if they (1) are enrolled in a school or program which is operated or supported by a public agency, and (2) receive special education services, supplemental or otherwise, at no cost.

A State may not count a child whose special education is paid for by the Federal government, unless the child is in one of the age groups 5-9 or 9-11, and there are no local or State funds available for services to handicapped children in that age group.

Children funded by the Federal government would include Indian children whose special education is paid for by the Federal government, as well as children whose services are paid for by Federal funds. The rule is consistent with the requirement that a free appropriate public education (FAPE) be made available by the State to each handicapped child. Parents are not required to take advantage of FAPE. If they choose to provide the services which are part of the public school's services, even though FAPE is available, the State has discharged its responsibility. However, by the same token, the child should not be counted by the State for its allocation if the child is not being provided special education as public expense. The whole reasoning appears to be that for Indian children and other children who receive their special education from the Federal government. The rule should serve as an encouragement to the States to provide services to all handicapped children, however, since any child provided special education from State or local funds may be counted.

Comment: Two other provisions in the regulations were objected to by commentators. The first of these provisions that handicapped children "enrolled" in school to receive special education services should be counted as receiving special education. These commentators felt that enrollment did not guarantee access to receipt of services. The second provision was, in essence, that a child who receives special education services may be counted, but not a child who reserves only related services. This was viewed as an overly restrictive reading of the Act.

There: No changes have been made in the regulations. While no system is perfect, enrollment in this way is consistent with the number of handicapped children receiving special education on October 1 and on February 1. The two dates on which the Act requires the counts of children served. It would not be appropriate to make an annual return on the total number of children in classrooms in other facilities where services are provided. While respect to children who only receive "related services" is governed by regulations that "related services" are only those identified in the plan and the Act only requires reporting the services the child received. This is taken from the definition of special education in section 602(a)(10) of the Act.

REALLOCATION OF LOCAL EDUCATIONAL AGENCY FUNDS

Comment: Commentators requested the regulations be added for when funds may be reallocated. Response: No criteria have been added as determinations will be made on a case-by-case basis.

APPLICATIONS TO PART 211 ADMINISTRATION

See: Monit'oring

Annual program plan requirements—121a-112; 121a-114; 121a-115.

States with a. child's education determined by the Federal government—121a-116.

Demonstration of State authority—121a-117.

Direct Service by State educational agencies—121a-118.

Local applications requirements—121a-119; 121a-120; 121a-121.

Local educational agency definition—121a-122.

State administration—121a-123.

Annual program plan requirements—121a-124.

General requirements—121a-125; 121a-126; 121a-127.

ASSOCIATIONS

Annual program plan condition of assistance—121a-128.

Application forms—121a-129.

Coordinated applications—121a-130.

Count of children—See: Reports.

Local agency-See: Reports.

Formula—121a-131; 121a-132; 121a-133; 121a-134; 121a-135; 121a-136.

Outstanding areas—121a-137.

Recovery for misclassified children—121a-138.

State applications—121a-139; 121a-140.

Approval—121a-141; 121a-142.

Effective period—121a-143; 121a-144.

General requirements—121a-145; 121a-146.

Public participation—See: Public Participation.

Submissions by States—121a-147.

Applicability of requirements—121a-148.

Annual program plan requirements—121a-149; 121a-150; 121a-151.

Approval or disapproval by State educational agency—121a-152; 121a-153.
RULES AND REGULATIONS

I. RULES AND REGULATIONS PROGRAMS

A. Annual program plan requirement—§ 121a.430.

B. Disbursement of annual program plan—§ 121a.119.

C. Terms—§ 121a.104.

D. Definitions—§ 121a.467.

E. Afternoon instruction—§ 121a.470.

F. Afternoon instruction—§ 121a.470.

G. Afternoon instruction—§ 121a.470.

II. RULES AND REGULATIONS PROGRAMS

A. Annual program plan requirement—§ 121a.428.

B. Disbursement of annual program plan—§ 121a.119.

C. Terms—§ 121a.104.

D. Definitions—§ 121a.467.

E. Afternoon instruction—§ 121a.470.

F. Afternoon instruction—§ 121a.470.

G. Afternoon instruction—§ 121a.470.

III. RULES AND REGULATIONS PROGRAMS

A. Annual program plan requirement—§ 121a.428.

B. Disbursement of annual program plan—§ 121a.119.

C. Terms—§ 121a.104.

D. Definitions—§ 121a.467.

E. Afternoon instruction—§ 121a.470.

F. Afternoon instruction—§ 121a.470.

G. Afternoon instruction—§ 121a.470.
RULES AND REGULATIONS

SPECIAL EDUCATION

See: Free Appropriate Public Education. Individualized Education Program. Defined—121a.4.

STATE AGENCY PAPER

Annual program plan requirements—121a.147.
General requirements—121a.855-121a.863.

STATE APPROPRIATION SOURCES

Annual program plan requirements—121a.21.
General requirements—121a.260-121a.273.

SUPPLEMENTAL

Applicability to State educational agency—121a.372.
Local application requirement—121a.250.
Private schools—121a.460.
Waiver of requirement—121a.580.

SPECIAL EDUCATION AID

Definition of parent—121a.10.

Local application requirement—121a.221.
Responsibilities—121a.514.

State application—121a.514.

TESTING

See: Evaluation.

TIME LIMITS AND TERMINABLES

Annual program plan effective period—121a.14.
Evalution of educational programs—121a.146.

FREE APPROPRIATION

Free appropriate educational opportunity—121a.220.

PUBLIC PARTICIPATION

Public participation in the annual program plan—121a.230-121a.235.

Reservations—121a.354.
State monitoring of public agencies—121a.460.

State review of hearing decision—121a.312.

TRANSPORT

See: Personal Development.

APPLICATIONS AND INVESTIGATIONS

Allocation formulas—121a.195.

Enrollement—121a.700-121a.710.

Annual program plan requirements—121a.146.

Department of the Interior (Indian children)—121a.300.

Excess costs—121a.25-121a.126.

Local educational agency—121a.328.

State and local educational agencies—Free appropriate educational opportunity—121a.301-121a.305.

Full educational opportunity goal—121a.301.

Priority—121a.320-121a.324.

Private school children—121a.450-121a.460.

State educational agencies—Funding formulas—121a.451.

Federal funds for state administration—121a.425.

Measurment—121a.371.

State advisory council on handicapped children—121a.690.

Use of local allocation for direct services—121a.360-121a.361.

State educational agency organization for direct and support services—121a.370.

Supplementation—121a.380-121a.389.

Training—See: Personal Development.

5. A new Part 121m is added to read as follows:

PART 121m—INCENTIVE GRANTS

Sec. 121m.1 Scope: purpose.
121m.2 Governing provisions regulations.
121m.3 Eligibility.
121m.4 Application.
121m.5 Application contents.
121m.6 Amounts of grant.
121m.7 Participation by children not covered by Part B of the Act.
121m.8 Excess costs.
121m.9 Administration.
121m.10 Annual evaluation report.


§ 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 education 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.13 of this chapter.

§ 121m.2 General provisions regulations.
Assistance under this part is subject to the requirements in Parts 150, 150c, and 121 of this chapter including definitions and fiscal, administrative, property management, 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 121 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

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detail in determining 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 handi-
capped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the amounts of the expenditure. The application must indicate the number of children to be served and the number of handicapped children who will be benefited indirectly. If children are to be benefited 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 services 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 grants to which the activities meet the objectives described under paragraph (b) of this section.

(28 U.S.C. 1418(b)).

§ 121m.6 Amounts of grants.

(a) The amounts of a grant is $200 multiplied by the average number of children ages three through five counted during the current school year under § 121a.750-121a.754 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.

(28 U.S.C. 1418(a), (d)).

§ 121m.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handi-
capped children ages three through five who are not counted under § 121a.750-
121a.754 of this chapter if the State edu-
cational agency ensures that these chil-
dren have all of the rights afforded un-
der 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.

(28 U.S.C. 1418(e)).

Comment. In carrying out the provisions of this part some activities are considered particularly appropriate for the use of these funds: (1) Providing parents with skills development information; (2) assuring parents in the understanding of the special needs of their handicapped child; (3) providing par-
ents counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) providing emotional support and guidance necessary to achieve personal growth and social acceptance; (5) providing transportation essential to the delivery of services; (6) providing speech therapy, compensatory therapy, or physical therapy.

§ 121m.8 Excess grants.

(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 avail-
able 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.

(28 U.S.C. 1418(f)).

§ 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.

(28 U.S.C. 1418(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 Com-
missioner 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 have had on the State's educational services to handi-
capped children ages three, four, and

five.

(28 U.S.C. 1418(e)).
APPENDIX C
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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9-22-80/8001/353/17
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**

| Placement (Art. 9)                                                                 | 119 |
| ---                                                                                   |     |
| Appropiateness 40                                                                     |     |
| Lack of 23                                                                            |     |
| All other 56                                                                          |     |
| Transportation (Art. 13)                                                               | 16  |
| Financial responsibility (Art. 8.07 #5)                                               | 15  |
| Miscellaneous                                                                        | 12  |
| Denial of related services (Art. 5)                                                   | 9   |
| Failure to comply with administrative order (Art. 10.24)                              | 4   |
| Expulsion or suspension of special education student (Art. 2.04 #1)                  | 4   |
| Disagreement with teaching practices                                                  | 3   |
| Graduation of special education student (Art. 3.03)                                   | 3   |
| Evaluation (Art. 9)                                                                   | 3   |
| Due Process (Art. 10)                                                                 | 3   |
| Parents' Rights (Art. 9)                                                              | 3   |
| Accessibility (Section 504 of Rehab. Act)                                             | 2   |
| Communication between special education program and parent                            | 2   |
| Delay in provision of services (Art. 9.24)                                            | 2   |

2All citations are from the Rules and Regulations to Govern the Administration and Operation of Special Education.
The dissertation submitted by Nancy Hablutzel has been read and approved by the following committee:

Dr. Samuel T. Mayo, Director
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Associate Dean, Education, Loyola

Dr. Ronald Morgan
Associate Professor, Education, Loyola

Dr. Joy J. Rogers
Associate Professor, Education, Loyola

Dr. Allan Shoenberger
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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.

12/1/82
Date

Samuel T. Mayo
Director's Signature