A History of the Due Process Procedure in Special Education

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A HISTORY OF THE DUE PROCESS PROCEDURE
IN SPECIAL EDUCATION

by

Nancy Hablutzel

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VITA

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

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CHAPTER I

INTRODUCTION

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

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

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

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

Section 504 of the Rehabilitation Act of 1974 is broader in scope 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 *Sweatt*, held that it was not an equal education to separate a doctoral student in this manner, and that not only he but also his future students would be adversely affected if this were allowed to continue. Again, they had succeeded in finding that the education being offered was not equal, but had not gone so far as to determine that "separate but equal" could not apply to education. That point was finally reached in *Brown*.

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

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

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

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

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

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

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

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

1. allow immediate removal of a student whose conduct disrupts the academic atmosphere of the school, endangers fellow students, teachers, or school officials, or damage property.
2. require notice of suspension proceedings to be sent to the student's parents within 24 hours of the decision to conduct the them.
3. require a hearing to be held, with the student present, within 72 hours of his removal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE LEGISLATIVE RESPONSE: P.L. 93-112,
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 know 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
It is at the multi-disciplinary staffing that the individualized educational program (IEP) is written, and both the parents and the school representatives must sign it. It has been suggested that this document is a "contract" of a legal nature between the schools and the parents, but it is quite clear from the Congressional History of the Act that this is not so (Cong. Hist., pp. 3 ff). The parent also is given the right to an independent evaluation of the child at public expense under certain circumstances. If the parent disagrees with the evaluation provided by the LEA, then he may have an independent outside evaluation at public expense. The LEA has the right, however, to initiate due process procedures under the Act, and if they are able to show that their evaluation is correct, then the parent still has the right to an independent outside evaluation, but not at public expense. (20 U.S.C. 1415 (b)(1)(A).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE ILLINOIS IMPLEMENTATION OF THE LAW

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

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

1. The request for a hearing is made to the local school district in writing, including the reasons for the hearing and all other pertinent information.
2. Hearing requests are limited to one a year, and within 10 days of notification of a proposed placement, if the purpose is to disagree with a placement.
3. The school district must notify the Illinois Office of Education (IOE) by certified mail within five school days of the request, and request the appointment of a hearing officer. There are specific requirements as to what must be in this notice (see Appendix A) and a copy of this letter must be sent to the person who requested the hearing.
4. If the district does not honor the request for a hearing, it must so notify the parents within five days, in writing, stating reasons for the denial.

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

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

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

1. The parents receive the list of five prospective hearing officers and strike one name.

2. The school strikes a second name.

3. This process continues until one person is left. He or she then becomes the hearing officer.

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

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

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

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

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

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

All hearings are reported to the ISBE in summary form, and the brief summaries are distributed to hearing officers, directors of special education, and some other concerned agencies. Other than this, there is no report made of the proceedings at due process hearings. It is not possible, for instance, for most school districts, parents, or other concerned persons to know either what the reasoning has been of hearing officers throughout the state, what the trends are in providing services, etc., for children in special education, or the other trends in special education decisions in the state unless these trends are passed along by word of mouth. The problem is obviously two-fold. It would be extremely useful for those involved in any way with special education in Illinois, whether it be as parent, teacher, student, litigitor, 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.

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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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DEFINITION OF TERMS

ARTICLE I

1.01 Case Study:

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

1.01a Consent:

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

1.01b Continuum of Alternative Placements:

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

1.01c Counseling Services:

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

1.02 Exceptional Children:

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

1.02a Individualized Education Program (IEP):

a written statement for an exceptional child that provides at least a statement of: the child's present levels of educational performance; annual goals and short-term instructional objectives; specific special education and related services; the extent of participation in the regular education program; the projected dates for initiation of services; anticipated duration of services; appropriate objective criteria and evaluation procedures; and a schedule for annual determination of short-term objectives.
1.03 Instructional Programs:

shall be defined as those activities which provide the principle elements of the exceptional child's educational development at any given time. These activities may include any or all of the following:

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

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

1.04 Language Use Pattern:

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

1.05 Least Restrictive Environment:

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

1.05a Multidisciplinary Conference:

a deliberation among appropriate persons for the purpose of determining 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 of 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:

- Auditory, visual, physical, or health impairment.
- Speech or language impairment.
- Deficits in the essential learning processes of perception, con-
  ceptualization, memory, attention, or motor control.
- Deficits in intellectual development and mental capacity.
- Educational maladjustment related to social or cultural circum-
  stances.
- 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:

- Additional or specialized education from the teacher
- Consultation to and with the teacher
- Provision of special equipment and materials
- 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 the following circumstances:
      (1) The students are grouped in relation to a common educational need, or
      (2) The program can be completely individualized, and
      (3) The teacher is qualified to plan and provide an appropriate educational program for each student in the group.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SPECIAL EDUCATION RELATED SERVICES

ARTICLE V

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

The related services to be provided are:

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

2. School psychological services to and on behalf of students who require psychological evaluation and assistance in their educational or behavioral adjustment.
   a. School psychological services shall include, but not be limited to:
Screening of school enrollments to identify children who should be referred for individual study.

Individual psychological examination and interpretation of those findings and recommendations which will lead to meaningful educational experiences for the child.

Counseling and performing psychological remedial measures as appropriate to the needs of students, individually or in groups.

Participating in parent education and the development of parent understanding.

Consulting with teachers and other school personnel in relation to behavior management and learning problems.

Consulting in program development.

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

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

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

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

(1) Services to school personnel on behalf of children
   The school social worker shall provide consultation and in-service training experiences to school personnel.

(2) Identification of children in need of services
   The school social worker shall be responsible for providing the social developmental study in a case study evaluation and for participating in the identification of those children who require social work intervention.

(3) Direct services to children

(4) Service to parents on behalf of children
   The school social worker shall be responsible for serving as a liaison between the home and the school and for providing parental education and counseling as appropriate in relation to the child's problem.

(5) Utilization of community resources
   The school social worker shall facilitate the effective utilization of existing community resources to meet the needs of school children and shall assist in developing services which are needed but unavailable.

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

c. School social work services shall be utilized to assist in the process of developing an educational climate conducive to the optimum development of all children. Emphasis shall be placed on prevention as well as rehabilitation, on indirect as well as direct services.
4. Special reader services, 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 pre-vocational training in an appropriate private program.

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

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

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

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

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

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

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

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

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

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

1. A summary of the child's individual problems.
2. A description of the program required by the child.
3. An explanation of why the child's needs cannot be met by the public school.
4. The description of the special education program offered by the private facility.
5. The request for placement of the child in a private facility as approved by the Illinois Office of Education.
6. Copy of the agreement with the facility.
7. Conference reports and periodic progress reports submitted by the private facility.
8. An annual reassessment of the need for continued private placement.

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

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

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

ARTICLE IX

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

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

2. Procedures developed by the district to create public awareness of special education programs and for advising the public of the rights of exceptional children shall include, but need not be limited to:
   a. Annual notification to all parents in the district regarding the special education programs and services available in or through that district and of their rights to receive, upon request, a copy of these rules and regulations.
   b. An annual dissemination of information to the community served by the school district regarding the special education program and services available in or through the district and the rights of exceptional children.

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

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

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

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

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

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

When a child is identified through the screening process, or exhibits problems
ich interfere with the child's educational progress and/or adjustment to the
cational setting, or when there is reason to believe that a child may
uire special education services, the child shall be referred for a case
ey evaluation.

Each local school district shall develop, and make known to all concerned
ersons, 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
structional 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.
9.06
Parental consent shall be obtained before:
1. Conducting any case study evaluation or reevaluation of the child
2. Initial placement of an exceptional child in a program providing special education and related services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. An interview with the child.

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

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

a. An interview with the child

b. Consultation with the child's parents

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

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

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

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

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

h. An assessment of the child's learning environment

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

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

   (a) In order to place any child in a special education placement for children with mental impairment (See Illinois Revised Statutes, Chapter 122, Section 14-8.01)
(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 14-1.0b 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)

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

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

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

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

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

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

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

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

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

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

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

   a. Notifying parents of the meeting early enough to insure that they will have an opportunity to attend; and
   b. Scheduling the meeting at a mutually agreed on time and place.
   c. The notice must indicate the purpose, time and location of the meeting, and who will be in attendance.

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

   a. A representative of the local district, other than the child's teacher, who is qualified to provide, or supervise the provision of special education (e.g., the state-approved special education director or designee).
   b. The child's teacher. Teacher organization representatives may not attend without parental and district consent.
   c. One or both of the child's parents or guardians.

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

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

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

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

d. The child, where appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IMPARTIAL DUE PROCESS HEARING

ARTICLE X

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

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

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

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

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

   e. Termination of a special education placement.

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

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

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

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

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

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

   l. Recommendation for the graduation of an exceptional child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.06a
Selection of one hearing officer from the list shall occur within five (5) calendar days after receipt of the list from the Illinois Office of Education and shall occur as follows:
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
10.14

The hearing shall be part of the child's temporary record, and is governed by the Illinois School Students Records Act. The cost for such record shall be shared equally by the Illinois Office of Education and the local school district.

10.15

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

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

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

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

10.16

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

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

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

10.17

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

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

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

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

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

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

2. The State Superintendent of Education may dismiss any appeal he deems lacking in substance.
   a. The State Superintendent of Education may dismiss an appeal in which the parents refuse to cooperate or provide additional information requested.
   b. The decision of the State Superintendent of Education requesting further information may be enforced as specified in these regulations.

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

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

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

SURROGATE PARENTS

ARTICLE XI

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE XII

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

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

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

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


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

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

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

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

12.06 The chief administrator of a special school shall hold a principal's certificate and approval in 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 Vehiculars 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.
14.04 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.

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

SPECIAL EDUCATION SERVICES FOR CHILDREN IN RESIDENTIAL CARE FACILITIES

ARTICLE XV

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

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

Orphanage

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

Children's Home

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

Foster Family Home

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

Other State Agencies

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

State Residential Units

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

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

15.03

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

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

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

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

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

15.04

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

15.05

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

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

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

15.06

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

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

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

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

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

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

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

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

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

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

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

15.15
The amount of reimbursement for which a district shall be eligible under
Section 14-7.03 shall be computed by determining the actual cost of main-
taining 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 reimburse-
ment.

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 main-
tain 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.

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approval of the Director of the Department of Corrections shall be made for the correction and transfer of inmates to other schools and other facilities where particular subject matter or facilities are more suited to or are needed. An inmate or wards education. Further, the Assistant Director of the Adult Department of Corrections or the Assistant Director of the Juvenile Division may authorize an educational furlough for an inmate of a 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 limits of confinement of an inmate or inmate, ward or wards, under the above conditions and for the above purposes, to leave for the after-said reason, the confines of such place, accompanied or unaccompanied, in the discretion of the Director of such Department by a custodial agent or educational personnel.

The willful failure of an inmate or ward to remain within the extended limits of his confinement or to return within the time prescribed to the place of confinement designated by the Department of Corrections in granting such extension or ordered to return by the custodial personnel or the educational personnel, or the departmental order shall be deemed an escape from the custody of such Department and punishable as provided in Section 17 of "An Act to provide for the Juvenile Court," approved June 30, 1933, as now or hereafter amended, as to the Adult Division inmates, and the provisions of the Juvenile Court Act shall apply to wards of the Juvenile Division.

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

CHAPTER 122—SCHOOLS

ARTICLE 14

HANDICAPPED CHILDREN

Sec. 1. Repealed.

14-1.01 Definition of terms.

14-1.02 Physically handicapped children.

14-2.03 Mentally handicapped children.

14-2.04 Mentally handicapped children.

14-2.05 Speech handicapped children.

14-2.06 Multiplying handicapped children.

14-2.07 Special educational services and facilities.

14-2.08 Special educational services and facilities.

14-2.09 School psychologist.

14-2.10 Professional worker.

14-2.11 Repeated.

14-2.12 Advisory committee.

14-2.13 Repeated.

14-2.14 Repeated.

14-2.15 Repeated.

14-2.16 Repeated.

14-2.17 Repeated.

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14-2.67 Repeated.

14-2.68 Repeated.
Learning Disabilities: means children between the ages of 5 and 11 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; of mental retardation; emotional disturbance; or environmental disadvantage.

Amended by P.L. 77-1318, § 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 5 and 11 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 adjusted.

Amended by P.L. 77-1318, § 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 5 and 11 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 intellectual, social, and economic usefulness in their homes or in a sheltered environment.


14-1.06 § 14-1.06 Speech defective children. "Speech defective children" means children between the ages of 5 and 11 years whose diagnosis by a qualified physician indicates that a qualified speech correctionist indicates that speech instruction would improve or correct the defect.

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

14-1.07 § 14-1.07 Multiply handicapped children. "Multiply handicapped children" means children between 5 and 11 years who may be placed in one or more classifications of this Article, or in at least 2 different programs as provided under Section 14-1.02 of this Article. Amended by act approved July 21, 1965. P.L. 1965, p. 1948.
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School 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 or 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.

Amended by P.A. 80-1404, § 1, eff. July 1, 1981.

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 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 previous 4 years, and the permit. Added by act approved July 21, 1965. L 1965, p. 1988.

14-1.10 § 14-1.10 Professional worker. Professional worker means a psychologist, a school social worker, school social worker intern, special administrator intern, registered therapist, professional consultant, special administrator or supervisor giving full time to special education, and teacher of any class or program defined in this Article who meets the requirements of this Article, who has the required special training in the understandings, techniques, and special methods of instruction for children who because of their handicapping conditions are placed in any program provided for in this Article and who works in such program. Added by act approved July 21, 1965. L 1965, p. 1988.


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

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

The Advisory Committee shall organize with a chairman selected by the Committee members and shall meet at the time and place and at such time as the written notice but not less than 4 times in each calendar year. The Advisory Committee shall by July 1, 1967, complete an adequate report to the State Board of Education a comprehensive plan whereby all handicapped children resident in the county may receive a good common school education. The Advisory Committee shall, at least every four years thereafter, review and recommend additions or modifications 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 sit as an 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 and complete and report by July 1, 1967, a regional plan whereby all handicapped children in the cooperating counties may receive a good common school education if such an approach seems desirable due to population sparsity, geographic factors, or because of other substantial reasons, including the existence of cooperative or joint agreements to serve those counties. At least every 4 years thereafter, such Advisory Committees shall recommend to the State Board of Education such additions or modifications of that regional plan.

In developing or revising 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 when developing special education programs or modifying the programs and services provided for special education programs.

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

Amended by P.A. 80-1406, § 1, eff. Aug. 15, 1980.


14-3.01 § 14-3.01 Advisory Council. There is hereby created a special education Advisory Council on Special Education, subject to the provisions of this Act, 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 amendment 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 50,000 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 in an initial term of 2 years, one member to an initial term of 3 years and one
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122 § 14-6.01

School Code § 14-6.01


14-5.01 § 14-5.01 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, community unit school districts, consolidated school districts, high school districts, non-high school districts, community high school districts and districts exceeding 500,000 inhabitants. Added by act approved July 21, 1965. L.1965, p. 148.

14-5.02 § 14-5.02 Delegating powers. The State Board of Education shall have the right to delegate to school boards of all types and sizes of school districts, including but not limited to special charter districts, community consolidated school districts, community unit school districts, consolidated school districts, high school districts, non-high school districts, community high school districts and districts exceeding 500,000 inhabitants, all powers and duties under this Article. Amended by P.A. 1965-1403, § 1, eff. Aug. 25, 1978.


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 conjunction therewith, exercise all 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 handicapped children of the types described in Sections 14–1.02 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 attains the nonpublic school resides. However, nothing in this Section shall be construed as prohibiting an agreement between the district where the student resides and another public school district to provide special educational services if such an arrangement is deemed more convenient and economical. Special educational services shall be provided to such students as soon as possible after the identification, evaluation and placement procedures provided in Section 14–4.03 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, 1966, high school districts are financially responsible for the education of handicapped pupils resident in their districts when such pupils have reached age 15 but may admit handicapped children into special educational facilities without regard to age of handicapped children residing in their districts after such pupils have reached the age of 14 years.

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member to an initial term of 4 years. Vacancies shall be filled in like manner for the unexpired balance of the term. Because of the responsibility of the Department of Children and Family Services, the Department of Health and Human 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 or experience in the problems of the education of handicapped children.

The State Board of Education shall seek the advice of the Advisory Council regarding all rules or regulations related to the education of handicapped children, as provided by law. The State Board 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 extent 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, (c) assure the State Board that all rules and regulations related to the education of handicapped children have been challenged by the State Board, and (d) comment publicly on any 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 hours prior thereto. 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 14–6.01 of this chapter.


14–6.01 § 14–6.01 Special educational facilities for handicapped children. School boards of one or more school districts that maintain a recognized school, whether operating under the general law or under a special charter, subject to any limitations hereunder and approved by the State Board of Education, shall furnish special educational facilities as may be needed for and for the education of handicapped children as persons described in Sections 14–1.02 through 14–1.07 of this Article who are residents of their school districts, 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 education 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 persons described in Sections 14–1.02 through 14–1.07 of this Act.


14–7.01 § 14–7.01 Administrative organization. The 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, community unit school districts, consolidated school districts, high school districts, non-high school districts, community high school districts and districts exceeding 500,000 inhabitants. Added by act approved July 21, 1965. L.1965, p. 148.
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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.


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

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

(a) Salaries of teachers, professional workers, necessary non-certificated 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 $20 per pupil. From such total cost thus determined there shall be deducted the State reimbursement due on account of such educational facility for the same year, not including any State reimbursement for special educational transportation, shall be divided by the average number of pupils in average daily attendance in such special educational facility for the school year in order to arrive at the per capita tuition cost.

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

A resident district may apply request, provide transportation for residents of the district who meet the requirements, other than the specified age of any of the definitions of handicapped in Sections 14-102 through 14-107, who attend classes in another district, and shall make a charge for such transportation in an amount equal to the cost thereof, including a reasonable allowance for depreciation of the vehicles used.


§ 14-7.02 § 14-7.02 Children attending private schools, public outside schools or private special educational facilities. The General Assembly recognizes that in public schools or special educational facilities provide an important service in the educational system in Illinois. If because of his or her handicap the special education program 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 Superintendent of Education, the school district in which the child is a resident shall pay the actual cost of transportation to and from the public school or special education facility, public out-of-state school, or public non-public educational service of the child's educational needs. If the child's educational needs require, excluding room, board, and transportation costs charged by the child, the 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 district per capita tuition charge for students not receiving special education services. Such reimbursement shall be paid in accordance with Section 14-13.01 for each school year ending June 30, to the board of each such school district, through the regional superintendent of schools, or 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 increase more than 10 percent over the tuition cost for the previous school year or exceeds $4,500 per year unless such costs are 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, who shall be appointed by the Governor: the Directors of Children and Family Services, Mental Health and Developmental Disabilities, Public Health, Public Aid, and the Bureau of the Budget: the State Superintendent of Education; and such others 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 fiscal assistance provided by all State agencies to assure that no otherwise qualified handicapped child receiving services under Article 14 shall be excluded from participation in, 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...
accordance with the rules and regulations established by it with consent 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, tuition and charges are fair and justifiable.

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 exceeds room, board and transportation costs, exceed $4,500 and such costs have been approved by the Review Board, the district shall pay such total costs which exceed $4,500.

A district making such tuition payments in excess of $4,500 pursuant to this Section shall be responsible for an amount in excess of $4,500 equal to the district per capita tuition charge and shall be eligible for reimbursement from the State for the amount of such payments actually made in excess of the districts per capita tuition charge for students not receiving special education services.

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, then such room and board costs shall be paid by the appropriate State agency subject to the provisions of Section 14-7.01 of this Act. Such costs not provided by a State agency other than the State Board of Education shall be provided by the State Board of Education as a current basis in lieu of a claim, however, that the State's liability for funding of such tuition costs begins until after the legal obligations of third party payors have been subtracted from such costs.

If the 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. Each district shall be paid an estimated claim, provided, that the regional superintendent of schools on the warrants of the State Comptroller on or before sixty days after the estimated reimbursement approved under this section on December 30 and three-fourths of the estimated reimbursement minus the December 20 payment on March 20. Each district shall file a final claim with the regional superintendent on or before June 30. The regional superintendent shall transmit such claim 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 or before September 15. Such current state reimbursement shall be reduced by an amount equal to the proceeds which the child or the child's parents are eligible to receive under any public or private insurance or assistance program. Nothing in this Section shall be construed as relieving an insurer or similar third party from an otherwise valid obligation 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 of tuition payments under Section whether the non-public or special education facility public district of 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 unable 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-of-state school or county special education facility unless the school district certifies to the State Superintendent of Education that the special education facility 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 14-4.91.

Any educational or related services provided pursuant to this Section in a non-public school or special education facility or a special education facility owned and operated by a county government shall be at no cost to the parent or guardian of the child. However, current law and practices relative to contributions by parents or guardians for costs other than educational or related services are not affected by this amendatory Act of 1978.


The review of the case of the child requiring extraordinary special education services and facilities under the following conditions:

1) the school district has determined the child requires extraordinary special education facilities.

2) the school district maintains adequate cost accounting on document the per capita cost of special education and

3) the Superintendent of Public Instruction has reviewed the case study and staffing recommendations for each child referred and has approved the district to reimbursement.

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

1) the school district has determined the child requires extraordinary special education facilities.

2) the school district maintains adequate cost accounting on document the per capita cost of special education and

3) the Superintendent of Public Instruction has reviewed the case study and staffing recommendations for each child referred and has approved the district to reimbursement.

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other State agencies, or State residential units attend 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 as 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 membership 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 program and cost shall be approved by the State Superintendent of Education.

On forms prepared by the State Superintendent of Education, the district 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 those maintaining it;

2. That no service charges or other payments authorized by law were collected in lieu of taxes, nor any 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 state as approved by the State Superintendent of Education, for maintaining these classes.

If a school district makes a claim for reimbursement under Section 14-7-1 of 14-7-4 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 and facilities for special education classes approved by a school district or joint agreement for handicapped children who are residents of the facility at no cost to the school district or joint agreement. If such a program is not provided at no cost to the district or joint agreement for special education classes 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 Superintendent 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, of the amount of reimbursement for the classes, such program and cost shall be approved by the State Superintendent of Education.

The claim of a school district otherwise eligible to be reimbursed in accordance with Section 14-7-10 for the 1977-78 school year but for this amendatory Act of 1977 shall not be paid unless the district ceases to maintain such classes for the 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. 80-1086, § 1, eff. Nov. 23, 1977.


14-7.05a § 14-7.02a.

Combined reimbursement. A school district may claim reimbursement under both Section 14-7-02 and Section 14-7-03 for those children served under Section 14-7-03 whose needs also require placement under Section 14-7-02.


14-8.01 § 14-8.01.

Supervision of special education buildings and facilities. All special educational facilities, building programs, housing and all educational programs as approved by the State Superintendent of Education for handicapped children defined in Sections 14-1-02 through 14-1-07 shall be under the supervision of and subject to the approval of the State Board of Education.

All educational programs for the types of handicapped children included in Sections 14-1-02 through 14-1-07 administered by any State agency shall be under the general supervision of the State Board of Education. Such supervision shall be limited to insuring that such educational programs meet standards jointly developed and agreed to by both the Illinois Office of Education and the operating State agency, including standards for educational personnel.

Any State agency providing special educational programs for handicapped children defined in Sections 14-1-02 through 14-1-07 shall promulgate rules and regulations in consultation with the State Board of Education and pursuant to the Illinois Administrative Procedure Act as now or hereafter amended, to ensure that all such programs comply with this Section and Section 14-8.02.

No otherwise qualified handicapped child receiving special education and related services under Article 14 shall be denied the benefits of or be subjected to discrimination under any program or activity provided by a State agency.

State agencies providing special education and related services including room and board, either
directly or through grants or purchases of services shall continue to provide these services according to current law and practice. Room and board costs 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 "federal money" or so much thereof as may actually be needed shall annually be appropriated to pay for the additional costs of providing for food and board for these children placed pursuant to Section 17-102 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 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, 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 shall propugate rules and regulations for annual evaluations of the effectiveness of all special education programs and related services of the local school district of the individualized educational program for each child for whom it provides special education services.


Chapter 122, 5.01 et seq.

Section 122-1.01 et seq., this chapter.

122-8.02 | 14-8.02. Identification, Evaluation, and Placement of Handicapped. The State Board of Education shall make rules under which local school boards shall determine the eligibility of children to receive special education. Such rules shall ensure that a free appropriate public education be available to all handicapped children as defined in Sections 14-1.02 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 special education 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 a qualified psychologist. No child shall be eligible for special education facilities for the trainable mentally handicapped except with a psychological evaluation and recommendation by a school psychologist. Placement shall be determined by the parent or guardian of a child before any evaluation is conducted. If consent is not given then the school district may initiate an impartial due process hearing under this Section prior to such independent evaluation to demonstrate that the district's evaluation is appropriate. If the final decision is that the school district's evaluation is inappropriate, 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 guardian of the child. After a child has been determined to be eligible for a special education program, such child must be placed in the appropriate program pursuant to the individualized educational program by 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, an education 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 participate in 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 to writing a notice of any decision to initiate or change, or to refuse to initiate or change, the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education in 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 child, or the provision of a free appropriate public education and to have an impartial due process hearing on the complaint. The notice shall inform the parents or guardian of the parent's or guardian's native language unless it is clearly not feasible to do so, of their rights and all procedures available pursuant to this Act and federal law 94-142. It shall be the responsibility of the State Superintendent to develop uniform notices setting forth 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 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 purpose of developing an individual 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 of a student. An impartial hearing officer shall be appointed as follows: If the request is made through the local school district, within 5 school days of receipt of the request, the local school district shall forward the request to the State Superintendent. Within 5 days after receiving this request for hearing, the State Board of Education shall provide a list of 5 prospective, impartial hearing officers. No one on the list may be a resident of the school district. The board and the parents or guardian or their legal representatives within 5 days shall alternatively strike one name from the list until only one name remains. The parent 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 received 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 said evaluation to be paid by the local school district. Such hearing shall not be considered adversary in nature, but shall be directed toward bringing to all those necessary for the impartial hearing officer to render an informed decision. The State Board of Education shall, with the advice and approval of the Governor's 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 the special education program and related services proposed to meet the needs of the child are adequate, appropriate, and available. Any party to the hearing shall have the right to be represented by counsel and be accompanied and advised by an individual with special knowledge or training with respect to the problems of handicapped children at the party's own expense. The hearing officer may exclude objectionable evidence or witnesses. No preclusion as to the admissibility of evidence at the hearing has been decided to that party at least 5 days before the hearing, (d) obtain a written or electronic verbatim record of the hearing, (e) obtain written findings of fact and a written decision. The student shall be allowed to attend the hearing unless the hearing officer finds that attendance is not in the child's best interest or detrimental to the child. The hearing officer shall specify in the findings the reasons for denying attendance by the student. The hearing officer may issue subpoenas requiring the attendance of witnesses and, at the request of the parent, guardian or school board representatives, shall issue subpoenas. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parent or guardian. The school board to not more than 10. The State Board of Education and the school board shall share equally the cost of such process. The hearing officer shall render a decision and shall submit a copy of the finding and its decision to the parent 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 parent unless such decision is appealed pursuant to the provisions of this Section.

Any party aggrieved by the decision may appeal the hearing officer's decision to the State Superintendent of Education. The Superintendent of Education or his designee shall conduct an impartial review of the hearing and may issue subpoenas requiring the attendance of witnesses at such review. The parties to the appeal shall be afforded the opportunity to present oral arguments and additional evidence at the review. Upon completion of the review, the State Superintendent of Education shall render a decision and shall provide a copy of the decision to all parties.

Any party aggrieved by the decision of the State Superintendent, including the parent or guardian, shall have the right to bring a civil action with respect to the removal proceedings. The decision of the State Superintendent shall be final except that any party aggrieved by the decision of the State Superintendent may appeal the decision to the court in the manner provided in Section 421:17A-10 of the Revised Statutes of New Jersey. The decision of the court shall be final.

During the pendency of any proceeding conducted pursuant to this Section, unless the State Superintendent of Education shall otherwise provide, 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 until such time as an impartial hearing officer determines, in the exercise of discretion, that the child does not require special education and related services.

The hearing officer shall have discretion to exclude irrelevant evidence or witnesses. The hearing officer may limit the number of witnesses to be subpoenaed in behalf of the parent or guardian. The school board to not more than 10. The State Board of Education and the school board shall share equally the cost of such process. The hearing officer shall render a decision and shall submit a copy of the finding and its decision to the parent 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 parent unless such decision is appealed pursuant to the provisions of this Section.

Any party aggrieved by the decision may appeal the hearing officer's decision to the State Superintendent of Education. The Superintendent of Education or his designee shall conduct an impartial review of the hearing and may issue subpoenas requiring the attendance of witnesses at such review. The parties to the appeal shall be afforded the opportunity to present oral arguments and additional evidence at the review. Upon completion of the review, the State Superintendent of Education shall render a decision and shall provide a copy of the decision to all parties.

Any party aggrieved by the decision of the State Superintendent, including the parent or guardian, shall have the right to bring a civil action with respect to the removal proceedings. The decision of the State Superintendent shall be final except that any party aggrieved by the decision of the State Superintendent may appeal the decision to the court in the manner provided in Section 421:17A-10 of the Revised Statutes of New Jersey. The decision of the court shall be final.

During the pendency of any proceeding conducted pursuant to this Section, unless the State Superintendent of Education shall otherwise provide, 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 until such time as an impartial hearing officer determines, in the exercise of discretion, that the child does not require special education and related services.
in the education or care of the student, or the State Board of Education. Services of any person assigned as an advisor shall terminate if the parent or guardian becomes available unless otherwise requested by the parents or guardian. The assignment of a person as an advisor at any time subsequent, terminates, or suspends the parent's or guardian's legal authority relative to the child. Any person participating in good faith as an advisor 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 wilful misconduct or willful violations.

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.


14-9-01  § 14-9-01 Qualifications of teachers, other professional personnel and necessary workers. No person shall be employed to teach any class or program authorized by this Article who does not hold a valid certificate as provided by law and unless he has had such special training as the Superintendent of Public Instruction may require. All professional personnel employed in any class, service, or program authorized by this Article shall hold such certificates and shall have had such special training as the Superintendent of Public Instruction may require. Nothing in this Act prohibits the school board from employing 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 require.

The employment of any teacher in a special education program provided for in Sections 14-1 to 14-10, inclusive, shall be subject to the provisions of Sections 21-11 to 21-18 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 21-11 to 21-18 inclusive. Added by act approved July 21, 1965, L.1965, p. 196.


14-10-01  § 14-10-01 Traineeship and fellowship program—Training of professional personnel. The Superintendent of Public Instruction with the advice of the Advisory Council may make traineeship or fellowship grants to persons of good character 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 14-10-10 of this Article. Persons to qualify for a traineeship must have earned at least a B average of college work, and persons to qualify for a fellowship must be graduates of a respected college or university. Each traineeship and fellowship may be in amounts of not more than $5,500 per academic year for traineeships and not more than $8,500 per academic year for fellowships except as indicated, an additional sum up to $2,500 annually for each grantee may be allowed to any approved institution of higher learning in Illinois for the cost to the institution, as certified by the institution. Part-time students and summer session students may be awarded grants on a pro rata basis. All grants shall be made under rules and regulations prescribed by the Superintendent of Public Instruction and issued pursuant to this Act.

The Superintendent of Public Instruction may, with any approved educational institution, or any other personal or private agency, 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, distances from campus, or other good and substantial reasons satisfactory to the Advisory Council.

The Superintendent of Public Instruction shall administer the traineeship and fellowship account and related record of each person who is attending an institution of higher learning under a traineeship or fellowship awarded pursuant to this section and at each proper time shall certify to the Auditor of Public Accounts or the State Comptroller, as the case may be, the current payment to be made to the holder of each fellowship. In accordance with an appropriate certificate of the holder of such fellowship endorsed by the institution of higher learning attended by him.

Following the completion of such program of study the recipient of such traineeship or fellowship 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 training received through a grant under this Article. Persons who fail to comply with this provision will, at the discretion of the Superintendent of Public Instruction, be required to refund all or part of the traineeship or fellowship monies received.

Amended by P.A. 77-1356, § 1, eff. Aug. 21, 1971.


14-11-01  § 14-11-01 Educational materials coordinating unit. There shall be established within the office of the Superintendent of Public Instruction under the direction of the Superintendent 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 andazure.

(2) Staff and resources of an instructional materials center to include library, audio-visual, program, and other types of instructional materials specifically adapted to the instruction of handicapped pupils.

The educational materials coordinating unit shall have as its major purpose the improvement of instructional programs for handicapped children and the in-service training of all professional personnel associated with programs of education and to these ends is authorized to operate under rules and regulations of the Superintendent of Public Instruction with the advice of the Advisory Council. Added by act approved July 21, 1965, L.1965, p. 196.
§ 14-11.02 Service centers for the deaf-blind.  
14-11.02 Notwithstanding any other Sections of this Article, the Illinois Office of Education shall develop and operate a service center for deaf-blind individuals.  For the purpose of this Section, the "deaf-blind" individual is a person who has both auditory and visual impairment. The combination of which causes such severe communicative and other developmental, educational, vocational and rehabilitation problems that such person cannot properly be accommodated in special education or vocational rehabilitation programs either for the hearing handicapped or the visually handicapped.

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

1. Identification and case finding;
2. Providing families with appropriate counseling;
3. Referring deaf-blind individuals to appropriate agencies for medical and diagnostic services;
4. Referring deaf-blind individuals to appropriate agencies for educational, training and care services;
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 the area accessible by public transportation. A permanent facility shall be constructed at a later date pursuant to the recommendations of the Advisory Board, as provided in this Section;
7. Receiving and disseminating State and federal funds designated for services to deaf-blind individuals;
8. Coordinating services to deaf-blind individuals through all appropriate agencies including the Department of Mental Health and Developmental Disabilities, and the Division of Vocational Rehabilitation;
9. Entering into contracts with other agencies to provide services to the deaf-blind. The center shall operate on a no-reject basis. Any deaf-blind individual under the age of 21 referred to the center for service and diagnosed as deaf-blind, as defined in this Act, shall qualify for all the available services of the center.

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

The center shall serve as the referral clearing-house 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 training and care for deaf-blind individuals; recommendations on the proper organizational and administrative procedures and arrangements of 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 individuals, and the purposes to be developed by the Illinois Office of Education;
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;
6. Planning for professional training in a State university or college.

The Advisory Board shall consist of one person appointed by the Governor; 2 persons appointed by the State Superintendent of Education; 2 persons appointed by the Directors of the Department of Children and Family Services, and Mental Health and Developmental Disabilities; and 2 persons appointed by the Governor for 3 years. A majority of the members of the Advisory Board shall be legally blind individuals or deaf individuals. A majority of the members of the Advisory Board shall be legally blind individuals or deaf individuals. A majority of the members of the Advisory Board shall be legally blind individuals or deaf individuals. A majority of the members of the Advisory Board shall be legally blind individuals or deaf individuals. A majority of the members of the Advisory Board shall be legally blind individuals or deaf individuals.
CHAPTER 122—SCHOOLS

122 § 14-13.01
School Code § 14-13.01

P. 99 and transmitted to the Comptroller on the 30th day of September, December, and March, respectively, and the school year ending June 30, if, after presentment and reimbursement of the September 30 voucher any claim has been redestined by the State Superintendent of Education, or subsequent vouchers shall be adjusted to amount of compensation 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 appropriated 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 such delinquency sent to it by the State Superintendent of Education by registered mail, shall constitute a forfeiture by the school district of its right to be reimbursed by the State under this Section.

Amended by P.A. 79-1307, § 1, eff. Sept. 12, 1977.


14-12.01 § 14-12.01. Account of expenditures—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 to 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 desired and utilized to house instructional programs, diagnostic services, or other special education services for handicapped children and reimbursement as provided in Section 14-13.01. Such application shall not include the cost of construction or maintenance of any administrative facility separately from special education facilities, or 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 comprised of all claims presented by the State Board of Education with the regional superintendent of education within 30 days of receipt on or before August 1, for approval on forms prescribed by the State Superintendent of Education. Data used as a basis of report includes the original and one copy of the claims on or before August 15. The State Superintendent of Education before approving any such claims shall determine their accuracy and whether they are based upon services and facilities provided under approved programs or activities. Upon approval the claimant shall transmit to the State Superintendent of Education before August 30 the State report of claims to the Comptroller showing the amounts due the regional educational service region for their respective reimbursement claims. Beginning with the first day of the fiscal year the first 3 vouchers shall be presented by the State Superintendent of Education.
CHAPTER 122 — SCHOOLS

Sec. 14-13.01 Reimbursement for special education building purposes. For school districts, including school districts which, by proper resolution, are obligated to contribute a proportionate part in a building program authorized under Section 12-2-11b, or under the "Intergovernmental Cooperation Act", as now or hereafter amended, and have levied the tax authorized by Sections 17-1-2a or 17-3-1 and there remains a shortage of necessary funds for the payment of the district's proportionate share of said building project, a 1% local reimbursement shall be given for each professional worker in the district. Such reimbursement shall be paid in accordance with Section 14-13.01 for each school year ending June 30 to the school boards through the county superintendent of schools, on the warrant of the State Comptroller out of any money in the treasury appropriated for such purposes, on the presentation of vouchers.

CHAPTER 122 — SCHOOLS

122 § 14A-6
School Code § 14A-6

§ 14A-6. Advisory Council. There is hereby created an Advisory Council on Education of Gifted Children to consist of 5 members appointed by the Superintendent of Public Instruction, who shall, until otherwise determined, be for the full term of 5 years, except that the initial appointments shall be made for periods of from one to seven years inclusive. At the expiration of these initial appointments, subsequent appointments shall be for the full term of 5 years.

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

The Superintendent of Public Instruction shall select the chairman of the Advisory Council and shall meet at the call of the chairman upon ten days written notice but not less than four times in each calendar year. The Council shall consider any rules or regulations proposed by the Superintendent of Public Instruction within 40 days after its receipt by the chairman. The members of the Council shall determine the time and place of its meetings and the manner of voting thereat.

The Superintendent of Public Instruction shall designate an employee of his office to act as executive secretary of the Council and shall furnish all necessary support for the performance of its duties.

§ 14A-6.1. Reimbursement for services and supplies. If 75 or more pupils in any school district or if the total number of pupils in any two or more cooperating school districts, counties, or in any cooperating community or any combination thereof, serves the purpose of the educational program and its operation for a full school term, the district or districts shall be entitled to reimbursement for the services and materials rendered therefor as the method described in subsection 4 as follows:

(a) For the purpose of this section, the number of pupils in each school district shall be determined as follows:

(1) In districts with 25 or more pupils;

(2) In districts with 15,000 but less than 25,000 pupils;

(3) In districts with 5,000 but less than 15,000 pupils;

(4) In districts with 5,000 but less than 5,000 pupils.

(b) The amount appropriated for such reimbursement for each school district shall be determined as follows:

(1) The amount to be reimbursed shall be calculated in accordance with Section 7 of this act, such reimbursement shall be equal to 50% of the amount of such school district

ARTICLE 143. EDUCATIONALLY DISADVANTAGED CHILDREN

143—1. Purpose.

The purpose of this article is to establish and administer local educational programs in the public schools in the State of Illinois for the educationally disadvantaged children as defined herein. Amended by act approved Aug. 29, 1963, 1963, 1963, p. 2222.

143—2. Definitions. For purposes of this article:

"Educationally disadvantaged children" means children between the ages of 3 and 21 years who do not qualify for the special educational services provided for in Article 14 of this Act but who, because of their home and community environment, are subject to such language, cultural, economic and social disadvantages that it is unlikely they will graduate from high school unless such educational programs and services supplementing the regular public school program are made available to them.

"Compensatory education program" means a program of instruction and services supplemental to the regular public school program for educationally disadvantaged children including such facilities, services, or activities as the Superintendent of Public Instruction and the Board of Education shall determine. Amended by act approved Aug. 29, 1963, 1963, 1963, p. 2222.

143—3. Supervision of Program.

The administration of compensatory education programs shall be supervised by the Superintendent of Public Instruction, the Board of Education, and the Board of Education of each school district in the State of Illinois. Amended by act approved Aug. 29, 1963, 1963, 1963, p. 2222.


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143—6. Funding.

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144—6. Funding.
RULES AND REGULATIONS

CHAPTER 1—OFFICE OF EDUCATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

EDUCATION OF HANDICAPPED CHILDREN

Implementation of Part B of the Education of the Handicapped Act

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

ACTION: Final regulation.

SUMMARY: These regulations implement amendments to Part B of the Education of the Handicapped Act as required by the Education for All Handicapped Children Act of 1975 by: (1) amending 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 funds and less fund to State and local educational agencies to assist them in the education of handicapped children.

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

These regulations also include the final rules for counting and reporting handicapped children. (The child counts rules were published in proposed form on September 9, 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:


or


SUPPLEMENTARY INFORMATION:

RULERSMITH REPORT—Public Participation

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

Before the proposed rules were drafted, the Office of Education undertook a major effort to obtain comments and suggestions for developing regulations from interested parties throughout the Nation. This involved participating in approximately 20 meetings about the Act conducted by approximately 170 people to develop concept papers for use in writing the regulations. Approximately 2,000 people participated in those meetings and several hundred comments were received.

In June 1976, the Office of Education convened a national writing group of approximately 20 people to develop concept papers for use in writing the regulations. These concept papers were reviewed by more than 2,000 people throughout the Nation. This group was composed of representatives of special interest organizations, i.e., APT, NER, special schools, and communicators of the Nation. These concept papers formed the basis for the proposed regulations.

During the months of July—November, the Office of Education prepared several drafts of the concept papers and continued to seek inputs on these drafts from various interested parties. On December 30, 1976, the proposed rules were published in the Federal Register. Written comments and recommendations on the proposed rules were invited for a 30-day comment period ending March 1, 1977; public hearings were held in Washington, San Francisco, Boston, and Atlanta. Over 1,000 written comments were received during that period, all of which were read and considered by the Office of Education in preparing these final regulations.

In addition to the public written comments, the Office of Education continued with public participation efforts including:

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

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

Response: Section 611 of the Act and the legislative history specify that the use of incentive grant funds is limited to children aged three through five years. However, the Term "children" in section 611 of the Act may be used for children from birth through age twenty-one.

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

ORGANIZATION OF REGULATIONS

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

(1) Part 1004—STATE ADMINISTERED PROGRAMS. This includes certain conforming amendments to the regulations under section 468(b)(1)(A) of the General Education Provisions Act.

(2) Part 112—Assistance to States for Education of Handicapped Children. This is divided into seven subparts: (A) General, (B) State Annual Program Plans and Local Applications, (C) Service Centers, (D) Procedural Safeguards, (E) State Administration, and (F) Allocation of Funds and Reports.

(3) Part 121—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 minor changes made from the proposed rules published on December 30, 1976.

ANALYSIS OF THE PROPOSAL

Appendix B of Part 121 includes an index of the major topics in the regulations. It is appropriate to public education, priorities, and individualized education programs and the specific sections in each part covered.

OVERVIEW OF CHANGES IN THE PART 112 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 major substantive 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 following rule has been made of explanatory comments in the text of the regulations. The purpose of these comments is to clarify or further interpret a particular rule, or to provide direction and assistance without imposing additional requirements. For example, an extensive explanation is included under the excess cost reimbursement rule and an example is given on how to make the computation under that requirement.
RULES AND REGULATIONS

(3) If a provision listed in paragraph (c)(2) of this section is different in wording from an assurance in the general application, the provision in that paragraph governs any question of compliance with the assurance.


2. In Part 1009, 11009.35 is revised to read as follows:

11009.35 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 11009.15(a) and (b).

(2) A general application and an annual program plan approved by the Commissioner in the case of the programs referenced in 11009.15(c).

(b) A State plan, general application, annual program plan, or amendment to any of them, is effective on the date which is the earliest of the application, plan, or amendment is approved.

(c) 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.


3. In Part 1009, 11009.35 is revised to read as follows:

11009.35 Obligation by recipients.

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

(b) Construction. In accordance with section 414(b) of the General Education Fund Act and Federal regulations, Federal funds which are not obligated by State and local recipients before the end of the fiscal period in which they are available for obligation by those agencies for one additional fiscal year, remain available for obligation by those agencies for one additional fiscal year.

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

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


4. Part 1212a is revised to read as follows:

PART 1212a—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

SUBPART A—GENERAL

PURPOSE, APPLICABILITY, AND GENERAL PROVISIONS

Reg. 1212a

1212.1 Purpose.

1212.2 Applicability to State, local, and private agencies.

1212.3 General provisions regulations.

1212.4 Free appropriate public education.

1212.5 Handicapped children.

1212.6 Identification.

1212.7 Intermediate educational unit.

1212.8 Local educational agency.

1212.9 Services.

1212.10 Parent.

1212.11 Public agency.

1212.12 Qualified.

1212.13 Related services.

1212.14 Special education.

1212.15 State.

1212a.2 State Annual Program Plans and Local Applications.

ANNUAL PROGRAM PLANS—GENERAL

1212a.10 Condition of assistance.

1212a.11 Contents of plan.

1212a.12 Certification by the State educational agency and attorney general.

1212a.13 Approval; disapproval.

1212a.14 Effective period of annual program plans.

ANNUAL PROGRAM PLANS—CONTENTS

1212a.20 Public participation.

1212a.21 Right to a free appropriate public education.

1212a.22 Timelines and ages for free appropriate public education.

1212a.23 Full educational opportunities goal.

1212a.24 Full educational opportunities goal—data requirements.

1212a.25 Full educational opportunities goal—disability.

1212a.26 Full educational opportunities goal—facilities, personnel, and services.

1212a.27 Provisions.

1212a.28 Identification, location, and availability of handicapped children.

1212a.29 Confidentiality of personally identifiable information.

1212a.30 Individualized education programs.

1212a.31 Procedural safeguards.

1212a.32 Least restrictive environment.

1212a.33 Provisions in evaluation procedures.

1212a.34 Responsibilities of State educational agency for all educational programs.

1212a.35 Monitoring procedures.

1212a.36 Improvements procedures—State educational agency.

1212a.37 Procedures for consultation.

1212a.15 Other Federal programs.

1212a.16 Comprehensive system of personnel development.

1212a.17 Private schools.

1212a.18 Recovery of funds for necessitates children.

1212a.19 Control of funds and property.

1212a.19a Recovery on applications.

1212a.20 Prohibition of remitting.

1212a.21 Annual evaluation.

1212a.22 State advisory panel.

1212a.23 Policies and procedures for use of Part B funds.

1212a.24 Description of Part B funds.

1212a.25 Nondiscrimination and enforcement of handicapped individuals.

1212a.26 Additional information if the State educational agency program.

LOCAL EDUCATIONAL AGENCY APPLICATIONS—GENERAL

1212a.30 Submission of application.

1212a.31 Responsibilities of State educational agency.

1212a.32 The excess cost resource requirements.

1212a.33 Meeting the excess cost requirements.

1212a.34 Excess costs—compensation of additional personnel.

1212a.35 Computation of excess costs—consolidated application.

1212a.36 Excess costs—limitation on use of Part B funds.

1212a.37 Consolidated applications.

1212a.38 State regulations of consolidated applications.

1212a.39 State educational agency approval; disapproval.

1212a.40 Wholesaling.

LOCAL EDUCATIONAL AGENCY APPLICATIONS—CONTENTS

1212a.220 Child identification.

1212a.221 Confidentiality of personally identifiable information.

1212a.222 Full educational opportunities goal—timelines.

1212a.223 Facilities, personnel, and services.

1212a.224 Personnel development.

1212a.225 Programs.

1212a.226 Parent involvement.

1212a.227 Participation in regular education programs.

1212a.228 Public control of funds.

1212a.229 Excess cost.

1212a.230 Nonreincorporation.

1212a.231 Comparable services.

1212a.232 Information—reports.

1212a.233 Comprehensive services.

1212a.234 Public participation.

1212a.235 Individualized education programs.

1212a.236 Local policies consistent with regulations.

1212a.237 Procedural safeguards.

1212a.238 Use of Part B funds.

1212a.239 Nondiscrimination and enforcement of handicapped individuals.

1212a.240 Other requirements.

APPLICATION FROM SECRETARY OF EDUCATION

1212a.30 Submission of annual application; approval.

1212a.31 Public participation.

1212a.32 Use of Part B funds.

1212a.33 Applicable regulations.

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chooses special education and related services to meet their unique needs.

b. To insure that the rights of handicapped children and their parents are protected.

c. To assist States and localities to provide for the education of all handicapped children, and

d. To assess and insure the effectiveness of efforts to educate these children.

(20 U.S.C. 1400; Ed. Notes)

§ 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 Handicapped Act.

(b) Public agencies within the State. The requirements of this part apply to all political subdivisions of the State that provide education in the education of handicapped children. These would include: (1) the State educational agency, (2) local educational agencies and intermediate educational units, (3) other State agencies and schools (such as the Department of Mental Health and Welfare and State schools for the deaf and blind), and (4) State correctional facilities.

(c) Private schools and facilities. Each public agency in the State is responsible for ensuring that the rights and protections under this part are given to children with disabilities who are placed in private schools and facilities by that public agency.

(See if 121a.409-121a.472.)

(b) In general.

Comment. The requirements of this part are being tested on each public agency that has direct or de facto authority to provide special education and related services in a State that receives funds under Part B of the Act, regardless of whether that agency is receiving funds under Part B.

§ 121a.3 General prohibitions.

Assistance under Part B of the Act is subject to the general prohibitions of Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1968, and Section 504 of the Rehabilitation Act of 1973, which include definitions and requirements relating to color, race, national origin, sex, handicap, marital status, age, and religion.

(20 U.S.C. 4317(b)).

Definitions

Comment. Definitions of terms that are used throughout these regulations are included in this section. Other terms are defined in the specific subparts in which they are used. Below is a list of those terms and the specific sections and subparts in which they are defined:

(1) Section 121a.500 to 121a.599 of Subpart E

(a) Disproportionate representation (Section 121a.590 of Subpart E)

(b) Reeducation and placement assistance services (Section 121a.570(b)(1)) of Subpart E.

(c) Evaluation (Section 121a.500 of Subpart E)

(d) Free public education (Section 121a.540 of Subpart C).

II. Federal Educational Evaluation (Section 121a.500 of Subpart E)

Rapid Evaluation Services Program (Section 121a.540 of Subpart C).

§ 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 to public agencies under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part.

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§121a.340-121a.349 of Subpart C.

(20 U.S.C. 1401(48)).

§ 121a.5 Handicapped children.

(a) As used in this part, “handicapped children” means those children evaluated in accordance with §§121a.350-121a.351 as being mentally retarded, brain damaged, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or having specific learning disabilities, who because of those impairments need special educational and related services.

(b) The term in its definition is defined as follows:

(1) “Deaf” means a hearing impairment which so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) “Blind” means a visual impairment which so severe that the child is impaired in processing visual information through sight, with or without corrective lenses, which adversely affects educational performance.

(3) “Deaf-blind” means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(4) “Handicapped” means a child that is so handicapped that it is unable to benefit from instruction in the classroom, and which so adversely affects a child’s educational performance that special education and related services are required to meet the child’s unique needs.

(5) “Multiple handicapping condition” means concomitant impairments (such as mentally retarded-visual, mentally retarded-auditory, visually handicapped-auditory), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) “Orthopedically impaired” means a child who is physically handicapped so severely that it 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 deformations, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractual deformities).

(7) “Other health impaired” means limited strength, vitality or alertness, or limited physical and mental ability due to chronic or acute health problems such as heart condition, tuberculosis, rheumatic fever, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(8) “Specific learning disabilities” means the learning disability is determined in accordance with the specific criteria in this section.

(9) “Speech impaired” means a disorder in articulation or fluent speech which adversely affects a child’s educational performance.

(10) “State” means the State educational agency of a State which receives funds under Part B of the Act.

(11) “Uniform grants regulations” means the regulations promulgated by the Department of Education for the receipt of funds under Part B of the Act.

§ 121a.510 Criteria for determining specific learning disabilities.

(a) In general.

Comment. The regulations in this section are based on the definition of “specific learning disabilities” found in §§121a.350-121a.351 of the Act.

(1) “Specific learning disabilities” means 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 do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain damage, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicap, of mental retardation, or of environmental, cultural, or economic disadvantage.

(2) “Speech impairment” means a communication disorder such as stuttering, impaired articulation, a language impairment, or a voice impairment, which
RULES AND REGULATIONS

In the term "handicapped," the Act does not prevent the following means of communication:

(1) "Visually handicapped" means a person who, even with correction, adversely affects an educational performance.

As used in this part the term "includes" means that the term means service not all of the possible items that are covered, whether like or unlike the enumerated items.

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

(a) Is under the local educational agency's State educational agency's supervision of a State educational agency's use of the State for educational purposes;

(b) Is established by State law for the purpose of providing educational services to educational purposes in a public educational system;

(c) Is similar to educational purposes in the educational purposes of the State which is to be provided by the educational services to handicapped children.

As used in this part the term "public agency" includes the State educational agency of the educational purposes for the educational purposes of the State which is to be provided by the educational services to handicapped children.

(2) "Handicapped" means a person with a physical or mental impairment who, by reason of that impairment, adversely affects an educational performance. The term includes, but is not limited to, such of the policies, programs, or practices as:

(a) Exclusion or separation of a handicapped child in a school or educational program that results in the child not being integrated into the regular educational program with non-handicapped children;

(b) Consideration of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the handicapped child.

(3) "Counseling and guidance services" means services provided by a licensed psychologist, guidance counselor, or other qualified personnel.

(4) "Early identification" means the identification of a handicapped child's need for early intervention, individual or group evaluation, or special education and related services.

(5) "Occupational therapy" includes:

(a) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation.

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

(c) Reducing, through early intervention, initial or further impairment or loss of function.

(6) "Parent counseling and training" means services provided by a certified professional in understanding the special needs of their child and providing parents with information about child development.

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

(8) "Psychological services" includes:

(a) Assessing a handicapped child's level of development.

(b) Providing for a handicapped child's educational development.

(c) Determining the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the handicapped child.

(d) School health services.

(e) "School health services" means services provided by a qualified school nurse services for handicapped children.

(f) "Social work services" includes:

(1) Preparing a social or developmental history on a handicapped child.
RULES AND REGULATIONS

\[\text{Subject B—State Annual Program Plans}\
\text{Annual Program Plans-General}
\]

\(\S 121a.110\) Conditions of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(a) The plan must contain the provisions required in this subpart.

\(\S 121a.111\) Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

\(\text{Subject C—Certification by the State educational agency and other waiver applicants}
\]

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

1. The plan has been adopted by the State educational agency,

2. The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

1. The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

2. All plan provisions are consistent with State law.

\(\S 121a.113\) Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100 of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for the hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in \(\S 121a.800-121a.833\) of Subpart B for a hearing under this section.

\(\S 121a.114\) Effective period of approval.

(a) Each annual program plan is effective for a period from the date it becomes effective under \(\S 121a.335\) of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

\(\text{Subject D—District Annual Program Plans}\
\text{Annual Program Plans-General}

\(\S 121a.110\) Conditions of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(a) The plan must contain the provisions required in this subpart.

\(\S 121a.111\) Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

\(\text{Subject E—Certification by the State educational agency and other waiver applicants}
\]

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

1. The plan has been adopted by the State educational agency,

2. The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

1. The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

2. All plan provisions are consistent with State law.

\(\S 121a.113\) Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100 of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for the hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in \(\S 121a.800-121a.833\) of Subpart B for a hearing under this section.

\(\S 121a.114\) Effective period of approval.

(a) Each annual program plan is effective for a period from the date it becomes effective under \(\S 121a.335\) of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

\(\text{Subject F—State Annual Program Plans}\
\text{Annual Program Plans-General}

\(\S 121a.110\) Conditions of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(a) The plan must contain the provisions required in this subpart.

\(\S 121a.111\) Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

\(\text{Subject G—Certification by the State educational agency and other waiver applicants}
\]

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

1. The plan has been adopted by the State educational agency,

2. The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

1. The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

2. All plan provisions are consistent with State law.

\(\S 121a.113\) Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100 of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for the hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in \(\S 121a.800-121a.833\) of Subpart B for a hearing under this section.

\(\S 121a.114\) Effective period of approval.

(a) Each annual program plan is effective for a period from the date it becomes effective under \(\S 121a.335\) of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.

\(\text{Subject H—District Annual Program Plans}\
\text{Annual Program Plans-General}

\(\S 121a.110\) Conditions of assistance.

In order to receive funds under Part B of the Act for any fiscal year, a State must submit an annual program plan to the Commissioner through its State educational agency.

(a) The plan must contain the provisions required in this subpart.

\(\S 121a.111\) Contents of plan.

Each annual program plan must contain the provisions required in this subpart.

\(\text{Subject I—Certification by the State educational agency and other waiver applicants}
\]

Each annual program plan must include:

(a) A certification by the officer of the State educational agency authorized to submit the plan that:

1. The plan has been adopted by the State educational agency,

2. The plan is the basis for the operation and administration of the activities to be carried out in that State under Part B of the Act; and

(b) A certification by the State Attorney General or other authorized State legal officer that:

1. The State educational agency has authority under State law to submit the plan and to administer or to supervise the administration of the plan, and

2. All plan provisions are consistent with State law.

\(\S 121a.113\) Approval; disapproval.

(a) The Commissioner shall approve any annual program plan which meets the requirements of this part and Subpart B of Part 100 of this chapter.

(b) The Commissioner shall disapprove any annual program plan which does not meet those requirements but may not finally disapprove a plan before giving reasonable notice and an opportunity for the hearing to the State educational agency.

(c) The Commissioner shall use the procedures set forth in \(\S 121a.800-121a.833\) of Subpart B for a hearing under this section.

\(\S 121a.114\) Effective period of approval.

(a) Each annual program plan is effective for a period from the date it becomes effective under \(\S 121a.335\) of this chapter through the following June 30.

(b) The Commissioner may extend the effective period of an annual program plan, on the request of a State, if the plan meets the requirements of this part and Part B of the Act.
ANNUAL PROGRAM PLANS—CONTENTS

§ 121a.120 Public participation.

(a) Each annual program plan must include procedures which ensure that the requirements in § 121a.200—121a.246 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 other material used to provide notice,

(b) A list of the newspapers and other media in which the State educational agency announced or published the notice, and

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

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

(3) A summary of comments received by the State educational agency and a description of the modifications that the State educational agency has made in the annual program plan as a result of the comments.

(4) A statement describing the methods by which the annual program plan will be made public after its approval by the Commissioner. This statement must include the information required under paragraph (b)(1) of this section.


§ 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 timelines under § 121a.122.

(b) The information must include a copy of each State statute, court order, State Attorney General opinion, and other State document that shows the source of the policy.

(c) This information must show that the policy:

(1) Applies to all public agencies in the State;

(2) Applies to all handicapped children;

(3) Implements the priorities established under § 121a.127(a)(1) of this subpart; and

(4) Establishes timelines for implementing the policy, in accordance with § 121a.122.


§ 121a.122 Timelines and ages for free appropriate public education.

(a) General. Each annual program plan must include in detail the policies and procedures which the State will undertake in order to ensure that a free appropriate public education is available for all handicapped children aged three through eighteen within the State not later than September 1, 1978, and for all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) Procedures relating to timelines. Each annual program plan must include a copy of each statute, court order, attorney general decision, and other State document which demonstrates that the State has established timelines in accordance with paragraph (a) of this section.

(c) Exception. The requirement in paragraph (b) of this section does not apply to a State with respect to handicapped children aged three, four, five, six, seven, eight, nine, ten, twelve, sixteen, seventeen, and eighteen through twenty-one.


§ 121a.123 Full educational opportunity.

Each annual program plan must include in detail the policies and procedures by which the State will ensure that all handicapped children are provided full educational opportunity to all handicapped children aged birth through twenty-one.


§ 121a.124 Full educational opportunity—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; and

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

(2) Who are enrolled in public schools and who are receiving a free appropriate public education; and

(3) Who are enrolled in public and private institutions and are not receiving a free appropriate public education.

(c) The estimated numbers 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.

(e) The data required by paragraphs (a), (b), and (c) of this section must be provided:

(1) For each disability category except for children aged birth through two; and

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


§ 121a.125 Full educational opportunity—eligibility.

(a) General. Each annual program plan must contain a detailed timetable for accomplishing the goal of providing full educational opportunity for all handicapped children.

(b) Content of timetable. (1) The timetable must indicate what percent of the total estimated number of handicapped children the State expects to have full educational opportunity in each succeeding school year.

(2) The data required under this paragraph must be provided:

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


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

(a) General. 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 additional data are necessary to meet the requirement.

(b) Statistical description. Each annual program plan must include the following data:

(1) The number of additional special class teachers, resource room teachers, and itinerant or consultant teachers needed for each disability category and
the number of each of these who are currently employed in the State.
2. The number of other professional personnel needed, and the number currently employed in the State, including school psychologists, school counselors, speech-language pathologists, audiological personnel, guidance personnel, teacher aides, physical education teachers, occupational therapists, speech therapists, homeroom teachers, home-room teachers, and speech-language pathologists.
3. The total number of personnel reported under paragraphs (a)(1) and (a)(2) of this section, and the salary costs of those personnel.
4. The number and kind of facilities needed for handicapped children and the number in kind currently in use in the State, including regular classes serving handicapped children, self-contained classes on a regular school campus, resource rooms, private special education day schools, private 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 in use in the State, and the number of handicapped children who use these units to benefit from special education.
6. Data categories. The data required under paragraphs (a)(1) and (a)(2) of this section must be described in detail to the Commissioner.
7. Current year data, based on the actions and methods of handicapped children receiving special education and related services as reported under Subpart C.
8. Estimates for the next school year.
9. Paragraphs (a)(1) through (a)(8) of this section must include a description of the means used to determine the number and kind of personnel.
32. U.S.C. 1032(s).
34. U.S.C. 1032(u).
42. U.S.C. 1032(cc).
44. U.S.C. 1032(ee).
52. U.S.C. 1032(mm).
60. U.S.C. 1032 uu.
64. U.S.C. 1032 yy.
70. U.S.C. 1032 e.
73. U.S.C. 1032 h.
74. U.S.C. 1032 i.
77. U.S.C. 1032 l.
78. U.S.C. 1032 m.
82. U.S.C. 1032 q.
83. U.S.C. 1032 r.
84. U.S.C. 1032 s.
89. U.S.C. 1032 x.
95. U.S.C. 1032 d.
98. U.S.C. 1032 g.
100. U.S.C. 1032 i.
104. U.S.C. 1032 m.
(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.558 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) (B)).

§ 121a.133 Provisions on evaluation procedures.

Each annual program plan must include procedures which insure that the requirements in § 121a.550-121a.558 of Subpart E are met.

(20 U.S.C. 1412(b) (C)).

§ 121a.134 Responsibility of State educational agency for all educational programs.

(a) Each annual program plan must include information which shows that the requirements in § 121a.600 of Subpart F are met.

(20 U.S.C. 1412(b)).

(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 that paragraph.

(20 U.S.C. 1413(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. 1413(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 for identifying children served by that public agency.

(20 U.S.C. 1413(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. 1413(b) (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 1968 (20 U.S.C. 2810-3), section 308 (b) (8) of that Act (20 U.S.C. 1864(b) (8) ) or Title IV-E of that Act (20 U.S.C. 1381), 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, only in a manner consistent with the goal of providing free appropriate public education for all handicapped children, except that nothing in this section limits the specific requirements of the laws governing those Federal programs.

(20 U.S.C. 1412(b) (B)).

§ 121a.139 Comprehensive system of personnel development.

Each annual program plan must include the material required under § 121a.388-121a.481 of Subpart G.

(20 U.S.C. 1412(b) (C)).

§ 121a.140 Private schools.

Each annual program plan must include policies and procedures which insure that the requirements of Subpart D are met.

(20 U.S.C. 1412(b) (D)).

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

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(b) (E)).

§ 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(b) (F)).

§ 121a.143 Records.

Each annual program plan must provide for keeping records and affording access to those records, as the Commissioner may find necessary to assure the correctness and verification of reports and of proper disbursement of funds provided under Part B of the Act.

(20 U.S.C. 1412(b) (G)).

§ 121a.144 Hearing on application.

Each annual program plan must include procedures to insure that the State educational agency does not take any final action with respect to an application submitted by a local educational agency before giving the local educational agency reasonable notice and an opportunity for a hearing.

(20 U.S.C. 1412(b) (H)).

§ 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(b) (I)).

Comment. This assurance is satisfied by the use of a separate accounting system that insures an "assiduous" view of the expenditures of the Part B funds. Separate bank accounts are not required. (See 45 C.F.R. 1085. Subpart F (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) (A)).

§ 121a.147 State advisory panel.

Each annual program plan must provide that the requirements of § 121a.480-121a.603 of Subpart F are met.

(20 U.S.C. 1412(a) (B)).

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

Each annual program plan must set forth policies and procedures for use of funds provided under Part B of the Act in accordance with the provisions of Part B, with particular attention given to sections 611(b), 611(c), 611(dd), 612(2), and 612(3) of the Act.

(20 U.S.C. 1412(a) (C)).

§ 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.620 of Subpart F.

(1) A description 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).

(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 allocations. 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).

(d) A description 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).

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(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 consolidated applications and the average number of local educational agencies per application.

(4) A description of direct services the State educational agency will provide under § 121a.303 of Subpart C.

(20 U.S.C. 1412(b)(1), (a)(2)(B)(1)).

$212a.185 Meaning of the excess cost requirements.

(a) A local educational agency measures the excess cost requirement as a percentage of the average amount at least the maximum amount computed under § 121a.184 for the education of handicapped children. This amount may not include capital outlay or costs.

(b) Each local educational agency must keep records adequate to show that the excess cost requirement.

(20 U.S.C. 1412(b)(2); 1414(a)(1)).

Comment. The following is an example of how a local educational agency measures the excess cost requirements.

The maximum average amount a local educational agency must spend for the education of each of its handicapped children before Part B funds are used. This is the amount under Part B funds as follows.

(a) From State funds... 7,000,000
(b) From Federal funds... 7,000,000
(c) From local funds... 7,000,000

Of this total, 28,000,000 was for capital outlay and debt service relating to the education of elementary school students, 2,000,000 to elementary school students, and 500,000 to secondary school students.

(20 U.S.C. 1412(a)).


due date for application

(20 U.S.C. 1412(a)).

$212a.186 Submission of applications.

In order to receive payments under Part B of the Act, the State educational agency must submit a consolidated application under § 121a.220-121a.223, 121a.227, and 121a.233.

(20 U.S.C. 1412(b)).

Local Educational Agency Applications—General.

$212a.189 Responsibilities of State educational agency.

Each State educational agency shall establish the procedures and format in which a local educational agency uses in preparing and submitting its application.

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

$212a.182 The excess cost requirement.

A local educational agency may only use funds under Part B of the Act for the excess costs of providing special education and related services for children with handicapped children.

(20 U.S.C. 1412(b)(1), (a)(2)(B)(1)).

$212a.185 Meaning of the excess cost requirement.

(a) A local educational agency measures the excess cost requirement as a percentage of the average amount at least the maximum amount computed under § 121a.184 for the education of handicapped children. This amount may not include capital outlay or costs.

(b) Each local educational agency must keep records adequate to show that the excess cost requirement.

(20 U.S.C. 1412(b)(2); 1414(a)(1)).

Comment. The following is an example of how a local educational agency measures the excess cost requirements.

The maximum average amount a local educational agency must spend for the education of each of its handicapped children before Part B funds are used. This is the amount under Part B funds as follows.

(a) From State funds... 7,000,000
(b) From Federal funds... 7,000,000
(c) From local funds... 7,000,000

Of this total, 28,000,000 was for capital outlay and debt service relating to the education of elementary school students, 2,000,000 to elementary school students, and 500,000 to secondary school students.

(20 U.S.C. 1412(a)).

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§ 121a.153 Computation of excess costs—consolidated applications.

The minimum average amount under § 121a.163 where two or more local educational agencies submit a consolidated application, is the average of the combined minimum average amounts determined under § 121a.164 in those agencies for elementary or secondary school students, as the case may be.

(20 U.S.C. 1414(a)(11).)

§ 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 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, nine, ten, eleven, twelve, or twelve-one, if non-local or State funds are available for non-handicapped children in that age range. However, the local educational agency must comply with the non-applying and other requirements of this part in providing the education and services.

(20 U.S.C. 1400(g)(2); 1444(a)(11))

§ 121a.190 Consolidated applications.

(a) Voluntary applications. Local educational agencies may submit a consolidated application for payments under Part B of the Act.

(b) Required applications. A State educational agency may require local educational agencies to submit a consolidated application for payments under Part B of the Act if the State educational agency determines that an individual application submitted by a local educational agency will be disapproved because:

(1) The agency’s enrollment is less than the 87,500 minimum required by section 611(c)(4) (A) (1) of the Act (§ 121a.360 (a) (1) of Subpart C); or

(2) The agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of handicapped children.

(c) A notice of the requirement. The State educational agency shall establish standards and procedures for determinations under paragraphs (b) (2) of this section.

(20 U.S.C. 1414(c) (3) (A))

§ 121a.191 Payments under consolidated applications.

In any case in which a consolidated application is approved by the State educational agency, payments to participating local educational agencies must be equal to the sum of the entitlements of their local educational agencies.

(20 U.S.C. 1414(c) (8) (A))

§ 121a.192 State regulations of consolidated applications.

(a) The State educational agency shall issue regulations with respect to consolidated applications submitted under this part.

(b) The State educational agency’s regulations must:

(1) Be consistent with section 611(1) (7) and section 611(a) of the Act, and

(2) Provide participating local educational agencies with joint responsibilities for implementing programs receiving payments under this part.

(20 U.S.C. 1414(d) (9) (B))

§ 121a.229 Child identification.

Each application must include procedures which ensure the privacy within the jurisdiction of the local educational agency who are handicapped, young, regardless of their handicap, and who are in need of special education and related services are identified, located, and evaluated, including a practical method of determining which children are currently receiving needed
special education and related services and (b) students who are not currently receiving needed special education and related services.

(22 U.S.C. 1466(d) (1) (A)).

Comment: The local educational agency is responsible for insuring that all handicapped children enrolled in its jurisdiction are identified, diagnosed, and evaluated, including children in all public and private programs and institutions. Plans and procedures, collection and use of data are subject to the accountability requirements in § 1121.130-1121.137 of 28 Part 2.

§ 121a.221 Confidentiality of personally identifiable information.

Each application must include policies and procedures which ensure that the criteria in §§ 121a.340–121a.373 of Support § 2 apply.

(22 U.S.C. 1466(a) (1) (B)).

§ 121a.222 Full educational opportunity goal.

(a) Each application must: (1) Include a goal of providing full educational opportunity to all handicapped children, aged three through twenty-one, and (b) Include a detailed timetable for accomplishing the goal.

(22 U.S.C. 1466(a) (1) (C)).

§ 121a.223 Facilities, personnel, and services.

Each application must provide a description of the facilities, personnel, and services, necessary to meet the goal in § 121a.222.

(22 U.S.C. 1466(a) (1) (D)).

§ 121a.224 Personnel development.

Each application must include procedures for the implementation and use of the core educational system of personnel development established by the State educational agency under § 121a.140.

(22 U.S.C. 1466(a) (1) (E)).

§ 121a.225 Priorities.

Each application must include priorities which meet the requirements of §§ 121a.320–121a.334.

(22 U.S.C. 1466(a) (1) (F)).

§ 121a.226 Parent involvement.

Each application must include procedures to ensure that, in meeting the goal under § 121a.225, the local educational agency makes provision for participation of and consultation with parents or guardians of handicapped children.

(22 U.S.C. 1466(a) (1) (G)).

§ 121a.227 Participation in regular education programs.

(a) Each application must include procedures to ensure that to the maximum extent practicable, and consistent with §§ 121a.350–121a.353 of Support Part 2, the local educational agency provides special services to enable handicapped children to participate in regular educational programs.

(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.

(22 U.S.C. 1466(a) (1) (H)).

§ 121a.228 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.

(22 U.S.C. 1466(a) (1) (I)).

§ 121a.230 Nonapparent.

(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 and intended to provide services to handicapped children meets the requirements of 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 preceding fiscal year for which the information is available. Allowance may be made for:

(i) Differences in enrollment of handicapped children;

(2) Unusually large amounts of funds expended for such long-term purposes 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 purpose.

(22 U.S.C. 1466(a) (1) (J)).

Comment. Under the “comparability” requirement, 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 served by the 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. This in effect, is required by the other requirements of the Act, including the provisions under § 121a.275–121a.277.

§ 121a.332 Information—report.

Each application must provide that the local educational agency furnishes information (which in the case of reports relating to programs utilizing funds with specific performance criteria developed by the local educational agency and related to program objectives) as may be necessary to enable the State educational

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agency to perform its duties under this part, including information relating to the educational achievement of handicapped children. 

32 U.S.C. (404(a)(3)(A)).

§ 121a.233 Records.
Each application must provide that the local educational agency keeps such records, and affords access to those records, as the State educational agency may require in order to ensure the correctness and verifiability of the information that the local educational agency furnishes under § 121a.232.

32 U.S.C. (404(a)(3)(B)).

§ 121a.234 Public participation.
(a) Each application must:
(1) Provide for making the application and all documents related to the application available to parents and the general public; and
(2) Provide that all evaluations and reports required under § 121a.232 are public information.

(b) In implementing the requirement in paragraphs (a)(1), the local educational agency shall use methods for public participation within its jurisdiction which are comparable to those required for the persons with disabilities described in § 314.284 of this subpart. However, the local educational agency is not required to hold public hearings.

30 U.S.C. (164(a)(6)).

§ 121a.235 Individualized education programs.
Each application must indicate procedures to assure that the local educational agency complies with § 121a.343-121a.348 of Subpart C.

30 U.S.C. (164(a)(3)).

§ 121a.236 Local policies consistent with section.
Each application must provide assurance satisfactory to the State educational agency that all policies and programs which the local educational agency establishes and administers are consistent with §§ 121a.21(4) and 121a.313(a) of the Act.

30 U.S.C. (164(a)(8)).

§ 121a.237 Procedural safeguards.
Each application must provide assurance satisfactory to the State educational agency that the local educational agency has procedural safeguards which meet the requirements of §§ 121a.200-121a.214 of Subpart E.

30 U.S.C. (164(a)(7)).

§ 121a.238 Use of Part B funds.
Each application must describe how the local educational agency will use the funds under Part B of the Act during the next school year.

30 U.S.C. (164(a)).

§ 121a.239 Non-discrimination and enforcement of handicapped individuals.
(a) Each application must include an assurance that the program assisted under Part B of the Act will be operated in compliance with Title VI of the Code of Federal Regulations Part 86 (Non-discrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance) of this title. The local educational agency may incorporate this assurance by reference if it has already been filed with the Department of Health, Education, and Welfare.

(b) The assurance under paragraph (a) of this section covers, among other things, the special education and employment of handicapped individuals under section 606 of the Act, which states:

The Secretary shall assure that each recipient of assistance under this Act shall make positive efforts to employ and advance in employment qualified handicapped individuals in programs assisted under this Act.


§ 121a.239. Other requirements.
Each local educational agency must:
(a) Include procedures for the implementation of the requirements of this part which are consistent with § 121a.348 of the Act.

(b) Include procedures for the implementation of the requirements of this part which are consistent with § 121a.601.

(c) Include other material as agreed to by the Commissioner and the Secretary of Interior.

30 U.S.C. (164(a)(8)).

§ 121a.240 Application to the Secretary of Interior.

§ 121a.245 Submission of annual application: approval.

§ 121a.246 Use of Part B funds.
(a) The Department of Interior may use five percent of its payments in any fiscal year, or $250,000, whichever is greater, for administrative costs in carrying out the provisions of this Part.

(b) The remainder of the payments to the Secretary of Interior in any fiscal year must be used in accordance with the priorities under §§ 121a.220-121a.224 of Subpart C.

30 U.S.C. (1611(f)).

§ 121a.247 Applicable regulations.
The Secretary of Interior shall comply with the requirements under Subparts E and F.

30 U.S.C. (1611(f)(3)).

Public Participants.

§ 121a.250 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 an opportunity for comment by the general public on the plan.

30 U.S.C. (4237; ;)

§ 121a.251 Notice.
(a) The State educational agency shall provide notice to the general public of the public hearings.

(b) The notice must be in sufficient detail to inform the public about:

1. The purpose and scope of the annual program plan;
2. The date, time, and location of each hearing;
3. The procedures for submitting written comments about the plan; and
4. The time frame for the development of the final plan and submitting it to the Commissioner for approval.

(c) The notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify the general public about the hearings, and 2. Enough in advance of the date of the hearings to afford interested parties throughout the State a reasonable opportunity to participate.

30 U.S.C. (4237; ;)

§ 121a.252 Opportunity to participate: comment period.
(a) The State educational agency shall conduct the public hearings at times and places that afford interested parties throughout the State a reasonable opportunity to participate.

(b) The public hearing must be available for comment for a period of at least 30 days following the date of the notice under § 121a.251.

30 U.S.C. (414(b)(7)).

§ 121a.253 Review of public comments before adopting plan.

§ 121a.254 Notice of the availability of approved plan.

After the Commissioner approves an annual program plan, the State educational agency shall:

(a) Review and consider all public comments, and
(b) Make any necessary modifications in the plan.

30 U.S.C. (414(b)(7)).

§ 121a.256 Public notice of approved plan.

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Subpart C—Services

FREE APPROPRIATE PUBLIC EDUCATION

§ 112a.340 Timeliness 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, 1977, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1979.

(b) Age ranges 3–5 and 6–17. This paragraph provides rules for applying the requirement in paragraph (a) of this section to HANDICAPPED CHILDREN aged 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 available a free appropriate public education available to all handicapped children in each age category in the State.

(2) If a public agency provides education to non-handicapped children in any of these age groups, the State must make available a free appropriate public education available to all handicapped children in each age category in the State.

(3) If a public agency provides education to handicapped children aged three through eighteen in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children in each age category in each State.

(c) Free appropriate public education. (a) Each State may use whatever local, State, and Federal and private resources are available in the State to meet the requirements of this part. (b) Nothing in this part requires an LREA, an LEA, or any other entity to provide services to the children in the State or to the children in any other State.

§ 112a.341 Free appropriate public education.

(a) Each State may use whatever local, State, and Federal and private resources are available in the State to meet the requirements of this part. (b) Nothing in this part requires an LREA, an LEA, or any other entity to provide services to the children in the State or to the children in any other State.

§ 112a.352 Residential placements.

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

(b) Each public agency shall provide that the hearing aids were used by deaf and hard of hearing children in schools are functioning properly.

§ 112a.342 Program options.

(a) Each State educational agency shall ensure that each public agency shall have the right to make special education services available to non-handicapped children in the area served by the public agency.

(b) Subject to the priority requirements under § 112a.330, the State educational agency may use funds to provide facilities, personnel, and services necessary to meet the full educational opportunity goal.
are served by the agency, including art, music, industrial arts, consumer and home economics, education, and vocational education.

20 T.C.S. 1421(3) (a); 1416(1) (1) (C).

Comment. The above list of program options is not exhaustive, and could include any program or activity in which non-handicapped students participate. Moreover, vocational education programs must be specially designed if necessary to enable a handicapped student to benefit fully from those programs, and the residual funds under these programs, as amended by Pub. L. 94-414, may be used for this purpose. Part B funds may also be used, subject to the priority requirements under § 121a.220-121a.230.

§ 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 obtaining employment opportunities.

(26 U.S.C. 14215) (a): 1416 (a) (1) (C)).

§ 121a.307 Physical education.

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

(b) Explanatory Note. 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.

(c) Special physical education. If specially designed physical education is prescribed in a child's individualized education program, the public agency responsible for the education of that child shall provide the services directly, or make arrangements for 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(18); 14215) (B); 1416(a) (6).

Comment. The Report of the House of Representatives on Pub. L. 94-142 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 master of courses in 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 take whatever action is necessary to ensure that physical education services are available to all handicapped children, and that specially designed physical education within the definition of special education is made clear that the Committee expects such services, specially designed where necessary, be provided as an integral part of the educational program of every handicapped child.

(Report No. 94-323, p. 26 (1975).)

§ 121a.320 Definitions of "first priority children" and "second priority children." For the purposes of § 121a.221-121a.324, the term:

(a) "First priority children" means

(1) Are in an age group for which the State must make available free appropriate public education under § 121a.200; and

(2) Are not receiving any education.

(b) "Second priority children" means

(1) Handicapped children, within such disability, with the more severe handicaps who are receiving an inadequate education.

(26 U.S.C. 1416 (17).

Comment. After September 1, 1978, there should be no second priority children, since Congress requires, as a condition of receiving Part B funds for Fiscal Year 1978, that all handicapped children will have available a free appropriate public education by that date.

Note. The term "free appropriate public education," as defined in § 121a.4 of Subpart K, means special education and related services provided in conformance with an individualized education program.

(c) Services for children with disabilities will continue to be funded by the State after September 1, 1978 through on-going efforts to identify, locate, and evaluate all handicapped children.

§ 121a.321 Priorities.

(a) Each State and local educational agency shall use funds provided under Part B of the Act in the following order of priorities:

(1) To provide free appropriate public education to first priority children, including the identification, location, and evaluation of first priority children.

(2) To provide free appropriate public education to second priority children, including the identification, location, and evaluation of second priority children.

(3) To meet the other requirements in this part.

(b) The requirements of paragraph (a) of this section do not apply to funds which the State uses for administration under § 121a.225.

(20 T.C.S. 1411 (b) (1) (B); (b) (2) (B): 11) (1) (B); (c) (3) (A) (U).

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

(20 T.C.S. 1411 (a) (3); Senate Report No. 94-146, p. 34 (1975).

Comment. Note that a State educational agency as well as local educational agencies must use Part B funds except the services used for (State administration) for the priorities. A State may have to set aside a portion of its Part B allocation to be able to serve heavily identified first priority children.

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

(2) To provide free appropriate public education to heavily identified first priority children.

(3) To meet the full educational opportunities goal required under sections 121a.203, including employing additional personnel and providing in-service training, in order to increase the level, intensity and quality of services provided to individual handicapped children.

(4) To meet the other requirements of Part B.


(a) In school year 1977–1978, if a major component of a first priority child's proposed educational program is not available (for example, there is no qualified teacher), the public agency responsible for the child's education shall:

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

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

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

(20 T.C.S. 1411 (18) (1).)

Comment. This provision is intended to make it clear that a State or local educational agency may not deny placing a previously unobserved first priority child until it has, for example, implemented an in-service training program. The child must be placed. After the child is placed as an interim program, the State or local educational agency may use Part B funds for training or other support services needed to provide the child with a free appropriate public education.

§ 121a.323 Services to other children.

If a State or local educational agency is providing free appropriate public education to all of its first priority children.
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) that:

(a) All first priority children have a right appropriate public education available to them;

(b) The local educational agency has been 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 right appropriate public education to the child.

30 U.S.C. 1412 (35)(1)(B), (c)(1)(B); 1416 (10)(G)-33

Handicapped Children Programs

§ 1121.345 Definition.

A handicapped child is a child who has a mental or physical handicap, as defined in § 1121.346, and who needs special education and related services.

§ 1121.346 Eligible handicapped children.

(a) Public agencies. The State educational agency shall ensure that each public agency develops and implements an individualized education program for each of its handicapped children.

(b) Private schools and facilities. The State educational agency shall ensure that an individualized education program is developed and implemented for each handicapped child who:

1. Is placed in or referred to a private school or facility by a public agency; or

2. Is enrolled in a parochial or other private school and requires special education or related services from a public agency.

30 U.S.C. 1412 (16); 1417 (41)

Comment: This section applies to all public agencies, private schools, and special education agencies (e.g., departments of mental illness and welfare), which provide special education to any handicapped child, and which have an obligation to refer to other agencies, by case law or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, the agency would be responsible for ensuring that the child receives an individualized education program.

§ 1121.347 Individualized Education Programs.

(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) Handicapped children currently in school. If a handicapped child who is currently in school has been determined to need special education and related services, a meeting must be held early enough to ensure that an individualized education program is developed by October 1, 1977.

(c) Other handicapped children. A public agency shall initiate and conduct meetings to periodically review each child's individualized education program and to appropriate revisions as its provision may be necessary. A meeting must be held for this purpose no less than once a year.

30 U.S.C. 1412 (35)(1)(B); (6); 1416 (a)(6)

Comment: The same services to all public agencies, private schools, and special education agencies (e.g., departments of mental illness and welfare), which provide special education to any handicapped child, and which have an obligation to refer to other agencies, by case law or through other arrangements. Thus, if a State welfare agency contracts with a private school or facility to provide special education to a handicapped child, the agency would be responsible for ensuring that the child receives an individualized education program.

§ 1121.348 When individualized education programs must be in effect.

(a) On October 1, 1977, and at the beginning of each school year thereafter, each public agency shall have in effect an individualized education program for every handicapped child who needs special education from that agency.

(b) An individualized education program must:

1. Be in effect before special education or related services are provided to a child; and

2. Be implemented as soon as possible following the meetings under § 1121.346.


Comment: (a) Under paragraph (a), it is expected that a handicapped child's individualized education program (IEP) will be implemented immediately following the meeting under § 1121.346. An exception to this would be (1) when the meeting occur during the summer or a recess period, or (2) where there are circumstances which require a short delay (e.g., working out transportation arrangements). However, there can be undue delay in providing special education and related services to the child.

§ 1121.349 Meetings.

(a) General. Each public agency is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising a handicapped child's individualized education program.

(b) Handicapped children currently in school. If a handicapped child who is currently in school has been determined to need special education and related services, a meeting must be held early enough to ensure that an individualized education program is developed by October 1, 1977.

(c) Other handicapped children. A public agency shall initiate and conduct meetings to periodically review each child's individualized education program and to appropriate revisions as its provision may be necessary. A meeting must be held for this purpose no less than once a year.

30 U.S.C. 1412 (35)(1)(B); (6); 1416 (a)(6)

Comment: 1. In initiating which teacher will participate in meetings on a child's individualized education program, the agency may wish to consider the following possibilities:

1. For the handicapped child who is receiving special education, the "teacher" could be the child's special education teacher. If the child's handicap is a speech impairment, the "teacher" could be the speech-language pathologists.

2. For a handicapped child who is being considered for placement in special education, the "teacher" could be the child's regular teacher. This would include the educational evaluation of the child. In this case, the child's regular teacher is being considered for placement in special education, the "teacher" could be the child's regular teacher. This would include the educational evaluation of the child.

2. Either the teacher or the agency representative should be selected in the area of the child's suspected disability.

3. For a child whose primary handicap is a speech impairment, the educational evaluation participating under program § 1121.349 (c) (1) (ii) (a) is not necessary.

§ 1121.345 Parent participation.

(a) Each public agency shall take steps to ensure that one or both of the parents of the handicapped child are present at each meeting or are afforded the opportunity to participate, including:

1. Notifying parents of the meeting in advance of the meeting and giving them a reasonable time to attend, and

2. Scheduling the meeting at a mutually agreed time and place.

§ 1121.346 General.

(a) All public agencies shall be responsible for ensuring that each handicapped child receives services in accordance with § 1121.346 and 1121.348.

(b) (1) The State educational agency shall ensure that all handicapped children who are eligible for services under § 1121.346, and who have been determined to need special education and related services, are provided with such services in accordance with § 1121.347. The State educational agency shall also ensure that each public agency provides services to the child in accordance with § 1121.347. In order to have IDEA in effect at the time the State educational agency and public agency can agree on the services to be provided, the State educational agency shall ensure that the public agency is informed by the State Board of Education by the 30th day of each school year of the amount of funds available to meet the needs of children with disabilities. The State Board of Education shall have the power to contract, through the State Board of Education, with public agencies to provide services to the child in accordance with § 1121.347. If the State Board of Education does not have the power to contract, the State Board of Education shall require the public agency to provide services to the child in accordance with § 1121.347.

(b) The State educational agency shall ensure that each public agency provides services to the child in accordance with § 1121.347. In order to have IDEA in effect at the time the State educational agency and public agency can agree on the services to be provided, the State educational agency shall ensure that the public agency is informed by the State Board of Education by the 30th day of each school year of the amount of funds available to meet the needs of children with disabilities. The State Board of Education shall have the power to contract, through the State Board of Education, with public agencies to provide services to the child in accordance with § 1121.347. If the State Board of Education does not have the power to contract, the State Board of Education shall require the public agency to provide services to the child in accordance with § 1121.347.
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The agency shall ensure that a representative of the private school facility attends the meeting. If the representative cannot attend, the agency shall use other means to insure participation by the private school facility, including individual or conference telephone calls.

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

(1) Reflects and revises individualized education programs. After a handicapped child enters a private school or facility, any meetings to review and revise the child's individualized education program may be initiated and conducted by the private school or facility at the request of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency shall insure that the parents and an agency representative:

(a) Are involved in any decision about the child's individualized education program;

(b) Agree to any proposed changes in the program before those changes are implemented;

(c) Have a role in the development of the program.

§ 121a-4.449 Handicapped children in parochial or other private schools.

If a handicapped child is enrolled in a parochial or other private school and receives special education or related services from a public agency, the public agency shall:

(1) Integrate and conduct meetings to develop, review, and revise an individualized education program for the child, in accordance with § 121a-4.447; and

(2) Ensure that a representative of the parochial or other private school attends the meeting with the parent of the handicapped child.

§ 121a-4.449 Individualized education programs.

Public agencies must provide special education and related services to a handicapped child in accordance with an individualized education program. However, Part B of the Act does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual educational objective.

Comment: This section is intended to reflect the directive that the individualized education program contains a guarantee by the public agency and the teacher that a child will progress in a specified area. However, the section does not require agencies and teachers from making good faith efforts to cause the child in assessing the objectives and goals listed in the individualized education program. Pursuant to the section does not limit any other regulations in the individualized education program.

(1) Does not prohibit the inclusion in the program of goals and objectives designed to ensure that a child achieves those goals and objectives.

(2) Does not require that the child achieve those goals and objectives, but rather ensures that the child is not held accountable if he fails to achieve those goals and objectives.
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A "PAPP" is a statutory term which requires that services be provided to individuals with disabilities as educational programs or services provided in accordance with an individualized education plan. The State must ensure that the services provided are appropriate to the needs of the student. Section 1211.390(d)(6) of Subpart G for administration, direct services, or support services.

1211.390 Comprehensive System of Personnel Development

Each annual program plan must include:

(a) The services provided to children with disabilities, educational, instructional, and related services, and support services;

(b) Procedures to ensure that all personnel necessary to carry out the purposes of the Act are qualified (as defined in §1211.3 of Subpart A) and that the services required to be provided by the Act are carried out by personnel who are qualified;

(c) Effective procedures for acquiring, disseminating, and evaluating the effectiveness of the services provided to children with disabilities, educational, instructional, and related services, and support services, and personnel;

(d) The State educational agency must ensure that all public and private institutions of higher education, and other educational programs, including representatives of handicapped, parent, and other advocacy organizations, are included in the planning process and that the plan is implemented in accordance with the requirements of the Act.

1211.391 Purposes of Other Agencies and Institutions

The State educational agency must ensure that all public and private institutions of higher education, and other educational programs, are included in the planning process and that the plan is implemented in accordance with the requirements of the Act.

1211.392 Accountability of State Educational Agencies

(a) The State educational agency must ensure that all public and private institutions of higher education, and other educational programs, are included in the planning process and that the plan is implemented in accordance with the requirements of the Act.

(b) The State educational agency must ensure that all public and private institutions of higher education, and other educational programs, are included in the planning process and that the plan is implemented in accordance with the requirements of the Act.

(c) The State educational agency must ensure that all public and private institutions of higher education, and other educational programs, are included in the planning process and that the plan is implemented in accordance with the requirements of the Act.

1211.393 Assessments

(a) As used in this section, "assessments" means the procedures used to determine the educational, instructional, and related services required to be provided by the Act.

(b) Each annual program plan must provide for the State educational agency.

(1) Conducts an annual needs assessment to determine if sufficient numbers of qualified personnel are available in the State and

(2) Plans for personnel development programs based on the assessed needs of State-wide significance related to the implementation of the Act, broken out by need for new personnel and need for retrained personnel.

(c) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

1211.394 Staffing

(a) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(b) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(c) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

1211.395 Reporting

(a) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(b) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(c) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

1211.396 Reporting

(a) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(b) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.

(c) The State educational agency must ensure that personnel are available to implement the plan and that the plan is implemented in accordance with the requirements of the Act.
(7) Specify procedures for effective evaluation of the extent to which program objectives are met.


§ 121a-383 Personnel development plan.

Each annual program plan must: (a) Include a personnel development plan which provides a structure for personnel planning and focuses on preservice and inservice education needs;

(b) Describe the results of the needs assessment under § 121a.382(b)(1) with respect to identifying needed areas of training, and assigning priorities to those areas; and

(c) Identify the target populations for personnel development, including general education and special education instructional and administrative personnel, support personnel, and other personnel (such as paraprofessionals, parents, surrogate parents, and volunteers).


§ 121a-384 Dissemination.

(a) Each annual program plan must include a description of the State's procedures for acquiring, reviewing, and disseminating to general and special educational instructional and support personnel, administrators of programs for handicapped children, and other interested agencies and organizations (including parent, handicapped, and other advocacy organizations) significant information and promoting practices derived from educational research, demonstration, and other projects.

(b) Dissemination includes:

(1) Making those personal, administrative, and organizational aware of the information and practices;

(2) Training designed to enable the establishment of innovative, progressive, and effective educational practices and procedures targeted on identified local needs;

(3) Use of instructional materials and other media for personnel development and instructional programming.

20 U.S.C. 1412(a)(3).”

§ 121a-385 Adoption of educational procedures.

(a) Each annual program plan must provide for a statewide system designed to adopt, where appropriate, promising educational practices and procedures proven effective through research and demonstration.

(b) Each annual program plan must provide for thorough reassessment of educational practices used in the State.

(c) Each annual program plan must provide for the identification of State, local, and regional resources (human and material) which will assist in meeting the State's personnel preparation needs.

20 U.S.C. 1412(a)(3).”

§ 121a-396 Evaluation.

Each annual program plan must include:

(a) Procedures for evaluating the overall effectiveness of:

(1) The comprehensive system of personal development in meeting the needs for personal development,

(2) The procedures for administration of the system; and

(3) The programs for the monitoring activities that will be undertaken to assure the implementation of the comprehensive system of personal development.

20 U.S.C. 1412(a)(3).”

§ 121a-387 Technical assistance to local educational agencies.

Each annual program plan must include a description of technical assistance that the State educational agency gives to local educational agencies in their implementation of the State's comprehensive system of personal development.

20 U.S.C. 1412(a)(3).”

Subpart D—Private Schools

Handicapped Children in Private Schools Placed or Referred by Public Agencies

§ 121a-401 Applicability of §§ 121a-401-121a-406.

As used in §§ 121a-401-121a-406, "handicapped children" means handicapped children enrolled in private schools or facilities other than handicapped children covered under §§ 121a-400-121a-403.

§ 121a-402 Responsibility of State educational agency.

Each State educational agency shall ensure that a handicapped child who is placed in or referred to a private school or facility by a public agency:

(a) Is provided special educational and related services;

(b) Maintains with the individual educational program which meets the requirements under §§ 121a-401-121a-406 of Subpart D of this Part;

(c) At no cost to the parents; and

(d) At a school or facility which meets the standards that apply to State and local educational agencies (including the requirements in part B); and

(e) Has all of the rights of a handicapped child who is served by a public agency.


§ 121a-403 Implementation by State educational agency.

In implementing §§ 121a-401, the State educational agency shall:

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a handicapped child; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards which apply to them.


§ 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-400-121a-403.

(b) Disagreements between a parent and a public agency regarding the availability and nature of special education and related services, and the question of financial responsibility, are subject to the due process procedures under §§ 121a-400-121a-403.

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

§ 121a-450 Applicability of §§ 121a-451-121a-460.

As used in §§ 121a-451-121a-460, "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, provision is made for the participation of private school handicapped children in the program assisted or carried out under part B by providing them with special education and related services;

(b) The other requirements in §§ 121a-452-121a-460 are met.

20 U.S.C. 1412(a)(4)(A).”

§ 121a-452 Local educational agency responsibility.

(a) Each local educational agency shall provide special education and related services designed to meet the needs of private school handicapped children residing in the jurisdiction of the agency.

(b) Each local educational agency shall provide private school handicapped children with genuine opportunities to participate in special education and related services consistent with the number of those children and their needs.

20 U.S.C. 1412(a)(4)(A); 1412(a)(8).”

§ 121a-453 Determination of needs, 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.
children, on a basis comparable to that used in providing for the participation under this part of handicapped children enrolled in public schools.

(30 U.S.C. 140a(4)(A))

§ 121a-454 Service arrangements.

Services to preschool school handicapped children may be provided through such arrangements as dual enrollments, educational radio and television, and the provision of mobile educational services and equipment.

(30 U.S.C. 140w(4)(A))

§ 121a-455 Alternative to services for private school handicapped children.

A local educational agency may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children if:

(a) The differences are necessary to meet the special needs of the private school handicapped children.

(b) The special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.

(30 U.S.C. 141c(1)(a) (4); 34 CFR 305.12(a)

§ 121a-456 Personnel.

(a) Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required for the handicapped children for whose needs these services have been designed, and only when these services are not normally provided by the public school.

(b) Each State or local educational agency providing services to children enrolled in private schools shall maintain continuing administrative control and direction over these services.

The services provided with funds under Part B of the Act for eligible handicapped children enrolled in private school facilities covered by this Part shall include, but not be limited to:

(1) The payment of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control; or

(2) The construction of private school facilities.

(30 U.S.C. 141c(1)(b) (4) (A))

§ 121a-457 Equipment.

(a) Equipment acquired with funds under Part B of the Act may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

(b) In exercising administrative control, the public agency shall keep records of and accounts for the equipment, and shall insure that the equipment is used solely for the purposes of the program or project, and removes the equipment from the private school premises if necessary to avoid its being used for other purposes or if it is no longer needed for the purposes of the program or project.

(30 U.S.C. 141c(1)(b) (4) (A) )

§ 121a-458 Prohibition of segregation.

Programs or projects carried out in public facilities and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

(30 U.S.C. 141c(1)(b) (4) (A) )

§ 121a-459 Funds and property not to benefit private schools.

Funds provided under Part B of the Act and property derived from those funds may not be used to benefit any private school.

(30 U.S.C. 141c(1)(b) (4) (A) )

§ 121a-460 Existing level of instruction.

Provisions for serving private school handicapped children may not reduce the educational level or the level of instruction in the public school.

(30 U.S.C. 141c(1)(b) (4) (A) )

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 121a-500 Definitions of "parent," "evaluation," and "personally identifiable information.

As used in this part, "consent" means that:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(b) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, in his or her native language, or other mode of communication;

(c) The parent understands and agrees in writing that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

"Evaluation" means procedures used in accordance with § 121a-500, to determine whether a child is handicapped and the nature and extent of the special education and related services that the child needs. The term means procedures used specifically with an individual child and does not include basic screenings or procedures used with all children in a school, grade, or class.

"Personally identifiable information" means information that:

(a) The name of the child, the child's parent, or other family member;

(b) The address of the child;

(c) A personal identification, such as the child's social security number or student number; or

(d) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty.

(30 U.S.C. 1415, 1417 (c) )

§ 121a-501 General responsibility of public agencies.

Each State educational agency shall ensure that each public agency establishes and implements procedural safeguards which meet the requirements of §§ 121a-500-121a-514.

(30 U.S.C. 1414(a))

§ 121a-502 Opportunity to examine records.

The parents of a handicapped child shall be afforded, in accordance with the requirements of §§ 121a-500-121a-502, an opportunity to inspect and review all education records with respect to:

(a) The identification, evaluation, and educational placement of the child, and

(b) The provision of a free appropriate public education to the child.

(30 U.S.C. 1414(9) (17)(A) )

§ 121a-518 Independent educational evaluations.

(a) General. (1) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(b) For the purpose of this part—

(1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(2) "Public expense" means that the public agency either pays for the full cost of the evaluation or pays a portion of the cost otherwise provided as no cost to the parent, consistent with § 121a-306 of this part.

(c) Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 121a-506 of this subpart to show that its evaluation is appropriate. If the final decision is that the evaluation is inappropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(d) Parent initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the public agency may not repeat the evaluation unless it is conducted by a qualified examiner who is not employed by the public agency.

(e) (1) Must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and

(2) May be presented as evidence at a hearing under this subpart regarding that child.
(d) Arrangements 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 at public expense.

(e) 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 placement evaluation; and

(2) Initial placement of a handicapped child in a program providing special education and related services.

(2) Except for placement evaluation, the 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 overruling 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.505-121a.506-121a.508 to determine if the child may be evaluated or initially provided special education and related services without parental consent.

(d) 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.510-121a.513.

(20 U.S.C. 1415(b)(1)(C), (D))

Comment: Any changes in a child's special education program, after the initial placement, are not subject to parental consent under Part B, but are subject to the prior notice requirement in paragraph (a) and the decertification education program requirements in Subpart C.

2. Paragraph (c) means that where State law requires consent before evaluation or before special education and related services are initially provided, and the parent refuses (or otherwise withholds) consent, State procedures, such as obtaining a court order authorizing the public agency to conduct the evaluation or provide the education and related services, must be followed.

If, however, there is no legal requirement for consent outside of these regulations, the public agency may use the due process procedures and follows the same procedures as those at §§ 300.507-300.509, and the agency must notify the parent of its decision to allow the evaluation or services without parental consent. The agency must notify the parent of its decision, and the parent has appeal rights as well as rights at the hearing itself.

§ 121a.505 Content of notice.

(a) The notice under § 121a.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report used by the agency 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 a 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 for the agency 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 contents 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 hearings.

(a) A parent or a public educational agency may initiate a hearing on any of the matters described in § 121a.504(a) (1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416(b)(3))

Comment: Many States have reported to OSERS that they have attempted to conduct a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of its handicapped children, and the provision of a free appropriate public education to those children. Mediation has 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 public hearing.

§ 121a.507 Impartial hearing officer.

(a) A hearing may not be conducted by:

(1) A person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the matter.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not disqualified 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. 1416(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 the 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 five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and conclusions. The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State educational agency established under Subpart F;

(6) Receive notice of any hearing that involves a hearing officer in which the hearing officer has been given the right to participate.

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

§ 121a.509 Hearing: decision; appeal.

A decision made in a hearing conducted under this subpart is final, unless
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§ 121a.310 Administrator appeals; impartial review.

(a) If the hearing is conducted by a public agency other than the State educational agency, any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency.

(b) If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing were consistent with the requirements of this part;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 121a.308 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Give a copy of written findings and decision to the parties.

(c) The decision made by the reviewing official shall be final, unless a party brings a civil action under § 121a.312.

§ 121a.312 Timeliness and convenience of hearing.

(a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing:

(1) A final decision is rendered in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(b) The State educational agency shall ensure that not later than 30 days after the receipt of a request for a review:

(1) A final decision is reached in the review.

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or review officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and the child.

(20 U.S.C. 1416(b)(3)).

§ 121a.315 Child's reason during proceedings.

(a) During the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement.

(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

(20 U.S.C. 1416(b)(3)).

§ 121a.314 Surrogate parents.

(a) General. Each public agency shall ensure that the rights of a child are protected, where, as a result of:

(1) No parent (as defined in § 121a.10) can be identified;

(2) No surrogate agency, after reasonable efforts, can discover the whereabouts of a parent; or

(3) The child is a ward of the State under the laws of that State.

(b) Duties of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual, to act as a surrogate for the parents. This must include a method (1) for determining whether a child needs a surrogate parent, and (2) for assigning a surrogate parent to the child.

(c) Criteria for selection of surrogates.

(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies shall ensure that a person selected as a surrogate:

(i) Has no interest that conflicts with the interest of the child he or she represents;

(ii) Has knowledge and skills that may reasonably be expected to serve the needs of the child;

(iii) Non-employee, free of a conflict of interest;

(iv) Is a parent, guardian, or other person who the child may reasonably believe is in a position to agree to the child's welfare.

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

§ 121a.330 Protection in Evaluation Procedures.

(a) Each State educational agency shall ensure that no handicapped child is excluded from participation in, or is discriminated against for participation in, a public school program to which the child has been admitted in accordance with the requirements of this part.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(20 U.S.C. 1412(b)(3)).

§ 121a.331 Reevaluation procedures.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program or change in the identification, evaluation or educational placement of the child's educational needs must be conducted in accordance with the requirements of § 121a.330.

(20 U.S.C. 1412(b)(4)).

§ 121a.332 Evaluation procedures.

State and local educational agencies shall have a process, to communicate that:

(a) Tests and other evaluation materials:

(i) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(ii) Have been validated for the specific purpose for which they are used;

(iii) Are administered by trained personnel in conformance with the instructions provided by their manufacturer;

(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) Tests are selected and administered so as to ensure that a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors being measured do not pertain to education of the child, as determined by the child's nonhandicapped peers, manual, or speaking skills (except where those
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DIAGRAM 1-530. Evaluation.

1. Each State educational agency shall conduct a periodic evaluation of the handicapped children's educational services. This evaluation shall be conducted in accordance with §§ 112.531-112.536.

2. The evaluation shall include an examination of the handicapped children's education program, including:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

3. The evaluation shall be conducted at least once every three years and no later than the end of the third month of each school year.

4. The evaluation shall be conducted by personnel who are knowledgeable about the handicapped children and who have expertise in the area of education for handicapped children.

5. The evaluation shall be conducted in accordance with the procedures and standards established by the State educational agency.

6. The evaluation shall be conducted in accordance with the procedures and standards established by the State educational agency.

DIAGRAM 1-531. Continuance of Alternative Programs.

1. Each public agency shall ensure that a continuing evaluation of the continuance of alternative programs is conducted at least once every three years.

2. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

3. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

4. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

5. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

6. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

7. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

8. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

9. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

10. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.

11. The continuance of alternative programs shall be based on the following criteria:
   a. The extent to which the handicapped children are making educational progress;
   b. The extent to which the handicapped children are achieving the educational goals established for them;
   c. The extent to which the handicapped children are receiving appropriate educational services;
   d. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment;
   e. The extent to which the handicapped children are receiving appropriate educational services in the least restrictive environment.
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§ 121a-554 Notice to parents.
(a) The State educational agency shall give notice which is adequate to fully inform parents about the requirements under § 121a.128 of Subpart B, including:
(1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;
(2) A description of the children on whom personally identifiable information is maintained, the types of information maintained, the methods the State tends to use in gathering the information (including the sources from whom information is gathered), 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 638 of the General Education Provisions Act and Part 96 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations);
(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

§ 121a-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, or used under this part.
(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 it fails to provide those copies which effectively prevent the parent from exercising the right to inspect and review the records, and the use of such copies as evidence in legal proceedings;
(3) The right to have a representative of the parent inspect and review the records;
(c) An agency may presume that the parent has authorized to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

§ 121a-565 List of types and locations of information.
Each participating agency shall provide parents on request a list of the types of information which are made for parents under this part or which are collected, maintained, or used by the agency.

§ 121a-566 Fees.
(a) A participating agency may charge a fee for a copy of a record which is made for parents under this part if the fee does not effectively prevent the parent from exercising the right to inspect and review those records.
(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

§ 121a-567 Amendment of records at parent's request.
(a) A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the educational or other rights of the child, may request the participating agency which maintains the information to amend the information.
(b) The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time after the request is made.
(c) If the agency decides to refuse to amend the information, it shall inform the parent of the refusal and advise the parent of the right of the parent to a hearing under § 121a.568.

§ 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,
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121A.57D Hearings. A hearing held under 121A.586 of this subpart shall begin when the party requesting the hearing presents its case and shall end when the party adverse thereto presents its case or, if the party adverse thereto fails to appear, when the party requesting the hearing shall be deemed to have presented its case.

121A.57I Notice. The party requesting the hearing shall serve on the other party a written notice of the hearing, specifying the place and time at which it is to be held, at least 30 days before the date of the hearing.

121A.57J Stipulations. The party requesting the hearing shall make an offer of stipulation, to the extent permitted, at least 30 days before the date of the hearing. The other party shall have a reasonable opportunity to object to the offer of stipulation and to the extent that the other party objects, the party requesting the hearing shall be deemed to have presented its case.

121A.57K Final decision. The party requesting the hearing shall be deemed to have presented its case unless the other party objects to the offer of stipulation and the party requesting the hearing does not make an offer of stipulation at least 30 days before the date of the hearing. The other party shall have a reasonable opportunity to object to the offer of stipulation and to the extent that the other party objects, the party requesting the hearing shall be deemed to have presented its case.

121A.57L Final decision. The party requesting the hearing shall be deemed to have presented its case unless the other party objects to the offer of stipulation and the party requesting the hearing does not make an offer of stipulation at least 30 days before the date of the hearing. The other party shall have a reasonable opportunity to object to the offer of stipulation and to the extent that the other party objects, the party requesting the hearing shall be deemed to have presented its case.

121A.57M Final decision. The party requesting the hearing shall be deemed to have presented its case unless the other party objects to the offer of stipulation and the party requesting the hearing does not make an offer of stipulation at least 30 days before the date of the hearing. The other party shall have a reasonable opportunity to object to the offer of stipulation and to the extent that the other party objects, the party requesting the hearing shall be deemed to have presented its case.

121A.57N Final decision. The party requesting the hearing shall be deemed to have presented its case unless the other party objects to the offer of stipulation and the party requesting the hearing does not make an offer of stipulation at least 30 days before the date of the hearing. The other party shall have a reasonable opportunity to object to the offer of stipulation and to the extent that the other party objects, the party requesting the hearing shall be deemed to have presented its case.
party has an opportunity to submit written statements in support of education of 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, by any additional information he may request, or obtain through on-site reviews of the State's educational programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(4) The State may request a hearing under § 121a.586-121a.587 with regard to any final action by the Commissioner under this section.

§ 121a.586 Waivers of requirement regarding representation and supplements with Part B funds.

(a) Under sections 615(a)(9) (B) and 616(a)(2)(B) (B) 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 in so much as necessary local and special educational agencies. (See 615(a)(9) (B) and 616(a)(2)(B) (B) (i) of the Act if the Commissioner concurs with the evidence provided by the State.

(b) 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 basis for the request.

(6) Since the request for a waiver, the State shall include in the results of a special study or the State to obtain evidence of the availability of a free appropriate public education to all handicapped children. The special study must include statements in a representative sample of organizations which deal with handicapped children, and parents and teachers of handicapped children, relating to the following areas:

(1) The adequacy and comprehensiveness of the State's system for identifying, locating, and evaluating handicapped children.

(2) The cost to parents, if any, for education for children enrolled in public and private day schools, and in public and private residential schools and institutions.

(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, by any additional information he may request, or obtain through on-site reviews of the State's educational programs and records, to determine if all children have available to them a free appropriate public education, and if so, the extent of the waiver.

(4) The State may request a hearing under §§ 121a.586-121a.587 with regard to any final action by the Commissioner under this section.

§ 121a.586 Waiving provisions. (a) The Commissioner may make the following findings only after reasonable notice and an opportunity for a hearing under §§ 121a.586-121a.587 to the State educational agency involved, and to any educational agency affected by any failure described in paragraph (b) or (c) of this section:

(1) If there has been a failure to comply substantially with the provisions of section 611 and 612 of the Act, or

(2) That in the administration of the annual program plan there is a failure to comply with any provision of this part or with any requirement in the application, or any additional information approved by the State educational agency under the annual program plan.

(b) After making either of the findings in paragraph (a) or (c) 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 the jurisdiction of the State to the extent that funds under those programs are available for the provision of special assistance for the education of handicapped children.

(c) The Commissioner withholds payments under paragraph (b) of this section he may determine:

(1) That withholding is limited to programs or portions thereof, or, if so affected by the failure, or

(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.586 Waiving provisions. (b) Until the Commissioner determines that there is no longer any failure to comply with any provisions of this part, as specified in § 121a.586(a).

(c) No further payments shall be made to the State under this part of all Federal programs specified in section 611(a)(2) of the Act which are within the jurisdiction of the extent that funds under those programs are available for the provision of assistance to the education of handicapped children.

(d) 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.

§ 121a.589 Waiving provisions. (a) Any State educational agency and local educational agency which receive a notice under § 121a.589(a) shall be made under a public notice, take any necessary action to inform the public within the agency's jurisdiction of the pending of the action.

§ 121a.590 Judicial review of Commissioner's final action on annual program plan.

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§ 121.601 Adoptions of complaint procedures.
(a) Each State educational agency shall adopt effective procedures for reviewing, investigating, and acting on any allegations of misbehavior, 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 the requirements.
(2) Provide for hearings, 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 §121.615
(20 U.S.C. 1416(b)(1))
Use of funds
§ 121.625 Federal funds for State administrative personnel.
A State may use five percent of the total State allotment in any fiscal year under Part B of the Act, or $200,000, whichever is less, for administrative personnel costs related to carrying out sections 612 and 615 of the Act. However, this amount cannot be greater than the amount which the State may use under §121.610 or §121.620, whichever is less.
(20 U.S.C. 1415(b)(7)(C))
§ 121.621 Allowable costs.
(a) The State educational agency may use funds under §121.620 of this subpart for:
(1) Administration of the annual program plan, 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 §121.620 or §121.625 in accordance with §121.609 of this subpart.
(20 U.S.C. 1411(b), (c))
State advisory panel
§ 121.650 Establishment.
(a) Each State shall establish, in accordance with the provisions of this subpart, a State advisory panel on the education of handicapped children.
§ 121.652 Advisory panel functions.
The State advisory panel shall:
(a) Advise the State educational agency of matters needful within the State in the education of handicapped children.
(b) Comment publicly on the State annual program plan and rules or regulations proposed for issuance by the

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State regarding the education of handicapped children and the procedures for distribution of funds under this part; and
(c) Assist the State in developing and reporting such information and evaluations as may assist the Commissioner in the performance of his responsibilities under section 618.
(20 U.S.C. 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.630.
(20 U.S.C. 1416(a)(1))

Subpart C—Allocation of Funds: Reports and Allocation

§ 121a.700 Special definition of the term State.
For the purposes of § 121a.701, § 121a.702, and § 121a.704—121a.708, the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.
(20 U.S.C. 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 product of the number of handicapped children aged three through five in the State who are receiving special education and related services, multiplied by the applicable percentage, under paragraph (b) of this section, of the averages 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 each 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, 60 percent.
(20 U.S.C. 1411(a)(1))

(c) For the purposes of this section, the average per pupil expenditure in public elementary and secondary schools in the United States, means the aggregate amount for the second fiscal year preceding the fiscal year for which the computation is made or if satisfactory data for that year are not available at the time of computation, then during the most recent preceding fiscal year for which satisfactory data are available, of all local educational agencies in the United States (which, for the purposes of this section, means the fifty States and the District of Columbia), plus any direct expenditures by the State for operation of those agencies (without regard to the source of funds from which either of those expenditures are made), divided by the aggregate number of children in average daily attendance to whom those agencies provided free public education during that preceding year.
(20 U.S.C. 1411(a)(6))

§ 121a.702 Limitations and exclusions.
(a) In determining the amount of a grant under § 121a.701 of this part, 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 section 111 of the Elementary and Secondary Education Act of 1965.
(20 U.S.C. 1411(a)(6))

§ 121a.703 Reusable reduction.
(a) General. If the sums appropriated for any fiscal year for making payments to States under section 611 of the Act are not sufficient to pay in full the total amounts to which all States are entitled to receive for that fiscal year, the maximum amount which all States are entitled to receive for that fiscal year shall be ratably reduced. In case additional funds become available for making payments for any fiscal year during which the preceding sentence is applicable, those reduced amounts shall be increased on the same basis they were reduced.
(20 U.S.C. 1411(g)(1))

(b) Reporting dates for local educational agencies: and reenrollments: formula.
From the total amount of funds available to all local educational agencies, the 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 five in that agency who are 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.
(20 U.S.C. 1411(d))

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§ 121a.702 Establishment of local educational agencies.

(a) 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 reallocate funds or 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.

(b) State educational agency may reallocate funds or 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.

§ 121a.703 Payment to Secretary of Education.

(a) The Commissioner is authorized to make payments to the Secretary of Education in accordance with the need for assistance for the education of handicapped children on reservations served by the Department of the Interior.

(b) The Secretary of Education shall provide funds to the Commissioner for the purpose of paying for services rendered to Indian children by the Commissioner.

§ 121a.712 Annual report of children served.

(a) The State educational agency shall report to the Commissioner the number of handicapped children served during the fiscal year.

§ 121a.713 Annual report of children served.

(a) The State educational agency shall report the number of handicapped children served during the fiscal year.

(b) The Commissioner is authorized to make payments to the Secretary of Education for the purpose of providing services to handicapped children.

(c) The Commissioner is authorized to make payments to the Secretary of Education for the purpose of providing services to handicapped children.

§ 121a.720 Annual report of children served.

(a) The State educational agency shall report to the Commissioner the number of handicapped children served during the fiscal year.

(b) The Commissioner is authorized to make payments to the Secretary of Education for the purpose of providing services to handicapped children.

(c) The Commissioner is authorized to make payments to the Secretary of Education for the purpose of providing services to handicapped children.
examination. If a State or local educational agency is responsible for serving these children, and does provide them special education and related services, they may be counted.

§ 121a.734 Annual report of children served by local educational agencies.

In addition to meeting the other requirements in this part, the State educational agency shall:

(a) Establish procedures to be used by local educational agencies and other educational institutions in counting the number of handicapped children receiving special education and related services, they may be counted.

(b) Set dates by which those agencies and institutions must report to the State educational agency in which the State complies with § 121a.734(a).

4. Obtain certification from each agency and institution that an undis- placed and accurate count has been made.

(c) Aggregate the data from the counts submitted by each agency and institution, and prepare the reports required under this section.

(d) Ensure that documentation is maintained which enables the State and the courts to audit the accuracy of the counts. (20 U.S.C. 1414(b); 4347(b).)

Government. States should note that the data required in the annual report of children served are not to be transmitted to the Com- mercial Service, nor do they require confidentiality, except insofar as State are encouraged to enter those data in non-personally identifiable form.

APPENDIX A—ANALYSIS OF FINAL REGULATIONS

I. Purpose

The regulations set forth requirements to be followed by States and localities that are responsible for serving handicapped children. The requirements are necessary to ensure that the provisions of the Handicapped Act are carried out. The regulations cover services, procedures, and requirements applicable to all States and local education agencies.

II. Purpose of Regulations

The regulations set forth requirements to be followed by States and localities that are responsible for serving handicapped children. The requirements are necessary to ensure that the provisions of the Handicapped Act are carried out. The regulations cover services, procedures, and requirements applicable to all States and local education agencies.

III. Structure of Regulations

The regulations are structured to meet the requirements of the Handicapped Act.

IV. Definitions

The regulations define terms used in the regulations to ensure clarity and consistency.

V. Interpretation

The regulations provide guidance on how to interpret the terms used in the regulations.

VI. Procedural Considerations

The regulations provide guidance on how to implement the requirements of the regulations.

VII. Enforcement

The regulations provide guidance on how to enforce the requirements of the regulations.

VIII. Evaluation

The regulations provide guidance on how to evaluate the effectiveness of the regulations.

IX. Transition

The regulations provide guidance on how to transition from the existing system to the new system.

X. Appendix

The regulations include an appendix that contains additional information.

The regulations require that a State or local educational agency be responsible for serving these children, and does provide them special education and related services, they may be counted.

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Part 504) has been amended to include a new provision that requires States to report on the number of children served under the provisions of the Handicapped Act.

Defining Terms

The term "handicapped" includes children with disabilities that interfere with their education and require special services. This definition includes children with physical, mental, and emotional disabilities.

The regulations require that a State or local educational agency be responsible for serving these children, and does provide them special education and related services, they may be counted.

Statement of Purpose

The regulations set forth requirements to be followed by States and localities that are responsible for serving handicapped children. The requirements are necessary to ensure that the provisions of the Handicapped Act are carried out. The regulations cover services, procedures, and requirements applicable to all States and local education agencies.

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SUBPART B. The requirement for local educational agencies to be consistent with the annual program plans is not forth in section 111.308.

(1) A new paragraph has been added to section 111.308 which states: "Once this plan is approved, it cannot be changed without the consent of the local educational agency in writing."
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Priorities: [§114.231]

Comment: Many commenters were concerned that first priority expenditures cannot be used for insurance training or personnel who can serve these purposes, and asked that such insurance training services may be used as a financial component toward achieving the first priority.

Responses: The proposed rules have been reworded in order to address the above concerns. A new section was added to make it clear that an agency may use Part 2 funds for insurance training concurrently with placing a first priority child in school. In an attempt to clarify, if any component of the child's program is missing, the provisions of insurance training may not be used in a pre-condition for service to the child.

The intent of Congress with respect to the education of first priority children is being accomplished through the amendments to 34 CFR. 300 and very clear, as reflected in the following statements:

(1) The Congress has a responsibility * * * to see that all persons are assured equal opportunity. For handicapped children, this means, as a very clear, is appropriate that we give priority to those who are receiving no services at all. The first time that we try to reach those with the most severe handicaps who have traditionally received little or no services, second.

(2) First priority for spending under the legislation is to provide services for handicapped children who are not now being served.

(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 services at all.

Changes: Proposed sections 114.230, (Functional use of property) has been deleted.

Permits or the Use of or Part B Funds As part of the provisions on free appropriate public education, the law requires each State and local educational agency to establish priorities. First priority is given to handicapped children not receiving an education (defined as "first priority children") in the regular program and second to children in the regular program, within that disability, with the most severe handicap who are receiving an inadequate education (defined as "second priority children") in the regular program and third to children in the regular program, within that disability, who are receiving an inadequate education for purposes except for State administration funds. Section 114.230 of the proposed rule states that each State shall use its full entitlement under part B "in accordance with its priorities." The regulations which implement these priority requirements are included in sections 314.230-234.

Comment: Many commenters were concerned that first priority expenditures cannot be used for insurance training or personnel who can serve these purposes, and asked that such insurance training services may be used as a financial component toward achieving the first priority. 

Responses: The proposed rules have been reworded in order to address the above concerns. A new section was added to make it clear that an agency may use Part 2 funds for insurance training concurrently with placing a first priority child in school. In an attempt to clarify, if any component of the child's program is missing, the provisions of insurance training may not be used in a pre-condition for service to the child.

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Changes: Proposed sections 114.230-234 (Functional use of property) has been deleted.
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very costly and could essentially defeat the purpose of insuring active open parent in-

volvement in the child's program. It is believed that open parent involvement is an im-

portant part of the program and needs to be encouraged. Therefore, the regulations pro-

vide that all parents have the right to be involved in the IEP process. The teacher, the

child's teacher, or parent, or any other person who will represent a parent in the IEP

process, must have a right to be involved in the IEP process. The regulations further

provide that the teacher, the child's teacher, or parent, or any other person who will rep-

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Direct Services by the State Educational Agency

The direct services provisions of this subpart include sections on: (1) use of local educational agencies (LEA) funds; (2) metering and locating of core costs; (3) use of the State's SSA's entitlement; and (4) a State-matching requirement.

The section on the use of LEA allocations (section 211.210) has been restructured to contain the proposed paragraphs (a) and (b) in a single paragraph. This paragraph sets out the conditions under which an LEA may use an LEA's funds. A new paragraph (c) has been added, which requires the LEA to subtract any LEA funds that are required or necessary to provide the same services.

New paragraph (d) has been added, which requires the LEA to report to the Commissioner of Education the sum of funds used in the LEA's financial statements. A new paragraph (e) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

The section on metering and locating of core costs (section 211.211) has been restructured to contain the proposed paragraphs (a) and (b) in a single paragraph. This paragraph sets out the conditions under which an LEA may use an LEA's funds.

New paragraph (c) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

New paragraph (d) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

The section on use of the State's SSA entitlement (section 211.212) has been restructured to contain the proposed paragraphs (a) and (b) in a single paragraph. This paragraph sets out the conditions under which an LEA may use an LEA's funds.

New paragraph (c) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

New paragraph (d) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

The section on State-matching requirements (section 211.213) has been restructured to contain the proposed paragraphs (a) and (b) in a single paragraph. This paragraph sets out the conditions under which an LEA may use an LEA's funds.

New paragraph (c) has been added, which requires the LEA to report to the Commissioner of Education the amount of funds used in the LEA's financial statements.

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only in institutions of higher education with State approved programs.

On the other extreme there were sugges-
tions that the section "creates statutory requirements" and "federal rules should not
lay any task on a student" and "student
provides adequate instruction and heads
are not enough to warrant and regula-
tions.

Response: the current clarity requires in-
service education as a central part of the comprehen-
sive approach to personal develop-
ment and it is appropriate for the rule to
detail the nature and extent of the inservice
education that is required. This has been
accomplished through the outlining of pro-
cedures which define inservice education, its
parameters, and relationship to required
teacher education and related educational
rules do not define the specific nature of the train-
ing receiving. These rules have been designed to outline the foundation for
an adequate program of in-service education,
without limiting the creativity of State and
local personnel in their efforts to plan and
implement such a system.

Comment: a commenter suggested that the
requirement is "inconsistent with the concept of
higher education" be inserted in section
H-1(a)(1).

Response: No change has been made. How-
ever, improvement of instructions of higher
education is required under § 121a.3(a)(1).

Comment: A number of commenters sug-
gested the addition of special competencies and
professional to this section, constituting an
approved level of personnel to be trained or
involved in the review of training needs.

Response: No change has been made.
The State plan must include all personnel who
are designated.

Comment: Several commenters suggested
working changes designed to clarify the text of
the proposed rule on inservice training.

Response: Changes were made where nec-
ecessary to improve the clarity of the section
consistent with current usage.

Comment: There were number of sugges-
tions concerning the financial arrange-
ments, funding and receiving training.

Response: No change has been made.

Comment: Some commenters advocated the funding of
parent groups to conduct inservice training.

Response: Changes were made where nec-
ecessary to improve the clarity of the section
consistent with current usage.

Response: No change has been made.

Response: No change has been made. Spe-
cialized needs in physical education and
the uniqueness of these situations should be
depicted separately. This is presented in the
proposed rule.

Comment: One commenter objected to in-
cluding inservice training under this section.

Response: No change has been made. The
term "in-service education" in the Federal Act.
However, since the Act clearly requires that
in-service education be developed, such a system
must include the consideration of provision
of training.

Nora-The data required in sections
H-1(a)(2) and (a)(3) of Subpart B on the
numbers of handicapped children and the
size and number of personnel needed will
serve as the uniform data base within the
State for the personal development system
under § 121a.36 of this subpart. The data
can also be used by institutions of higher
education and in the development of a
training agency in supporting personal
performing applications under Part D of the
rules under § 121a.36 of the regulations under
Primary School.

Section H-1(d) of the regulations provides as follows:

121d. State personal needs

Each application shall include (a) a state-
ment by the State educational agency of
their teacher, and (b) a statement by the applicant of
how the proposed program relates to those
requirements, and (b) a description of the ways in
which the recipient's program plans and
objectives relates to the purposes of Part;

D of the Act.

Comment: One commenter suggested that
"teaching organizations" be specified as re-
cipients of information.

Response: No change has been made.

Comment: The proposed rule created a certain
amount of confusion among commenters in
that they would be required to be handled under
existing procedures. The

Response: Paragraphs (a) through (c) have
been deleted. It is not intended that
regular appeals should be handled under
existing procedures. The

Comment: A commenter suggested that
procedures be made for intermediates refer-
ning to the present and communication among
State agencies.

Response: No change has been made in the
section. The requirements of this section are
to be handled under existing procedures.

Comment: A commenter suggested that
provisions should be made that personnel who
consults with handicapped children or their parents
be informed of the procedures established by
the present regulations.

Response: No change has been made in the
section. The requirements of this section are
to be handled under existing procedures.

Comment: A commenter suggested that
the School Advisory Committees be appointed
in the context of the State regulations. The

Response: No change has been made. The
requirements of this section are to be handled under
existing procedures.

Comment: A commenter suggested that
all agencies involved in the

Response: No change has been made. The
requirements of this section are to be handled under
existing procedures.

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requirements of this section are to be handled under
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all agencies involved in the

Response: No change has been made. The
requirements of this section are to be handled under
existing procedures.
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Due Process Procedures for Parents and Children

SECTIONS (1116.469-1116.468)

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 commenters believed the phrase would be required to make it clear that the consent is not valid until 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 the informed consent in every case and to ensure that the consent is valid until the parent is informed of the information referred to in the consent.

Other changes: Proposed section 1116.468 (in part) and section 1116.469 (in part) have been amended. In the interest of clarification, the parents or guardians have been added to the public agencies subject to the specified requirements.

Handicapped Children of Public Schools

FOR PLACEMENT OR RELOCATION BY PUBLIC AGENCIES

(1) 1116.469 (1116.468)

Comment: A number of commenters felt that the process of evaluating a child for a handicap, the placement of the child, and so forth, was not consistent with the process for evaluating a child for special education. The commenters believed that the process for evaluating a child for a handicap should be consistent with the process for evaluating a child for special education. The commenters proposed that the process for evaluating a child for a handicap should be consistent with the process for evaluating a child for special education.

Response: The regulations have been amended to conform more closely to these comments. There was also some concern expressed regarding the need for greater consistency in the regulations for the evaluation of children with handicaps.

OTHER CHANGES: The regulations have been amended to conform more closely to these comments. There was also some concern expressed regarding the need for greater consistency in the regulations for the evaluation of children with handicaps.

RESPONSE: The regulations have been amended to conform more closely to these comments. There was also some concern expressed regarding the need for greater consistency in the regulations for the evaluation of children with handicaps.

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of an individualized education program in an
placement. The following additional comments were

Comment: Several comments felt that the regulation should require States
and local educational agencies to develop pro-
cedures for the selection of evaluations. This
would make it possible to determine the ade-
quacy of the evaluations and to insure unif-
formity in these procedures.

Response: A paragraph was added to sec-

(121a.430) (Census) which requires the
State educational agency to insure that each
public agency establishes and implements
evaluation-placement procedures.

Comment: Several comments felt that
additional time 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 extended to impose
very few absolute timelines in the regula-
tions for this part, because of the potential
administrative and legal problems they can
cause. Imposing timelines can actually delay
the provision of special education and
services to the handicapped child. Where it is
necessary to set timelines the time periods are
regarded as minimum and maximum times
for implementing a

A child should be evaluated as soon as
possible following referral. Any undue
delay in providing the evaluation would raise
the question of the State's and local educational
agencies' compliance with sections 112a.125 and
112a.235 (identification and classification
of all handicapped children).

Several comments requested clarification
whether a reevalua-
tion is required, as required by
section 112a.430(f). If the parents and
agency agree that the child should be trans-
ferred from a special education program to
a full time regular class placement.

The time periods have been

In this section, the time periods have been
described in the first paragraph. However,
evaluations are required to change in a child's placement (including a
determination as to an appropriate placement) are to be made only after a
summary of the meeting is held to review
the child's individualized education program
in accordance with the requirements under
sections 112a.125 (A.2) (8, 10) and 112a.235 (identification and
classification of all handicapped children).

Section (112a.430) of the Act requires States to develop procedures
in accordance with the requirements under
sections 112a.125 (A.2) (8, 10) and 112a.235 (identification and
classification of all handicapped children).

A new paragraph was added to section
112a.535 which requires the State to insure
that all public agencies establish and imple-
ment procedures in accordance with the
requirements of this part. In addition, a
new section, entitled "Noncompliance settings" was added. This section is taken from a
new requirement in the section 506 regulations

Comment: A number of commenters re-
quested that provisions be made for special
support in the regular classroom in order to
accommodate handicapped children (e.g.,
individualized education plans and placement rate and
assigning same to the river.

Response: No change was made, since the
State already authorizes the use of supplemen-
tary aids and services as a means of en-
suring a handicapped child is educated
with nonhandicapped children.

coercive and damaging placement

(46 CFR Part 94) (A))

Comment: Many commenters responded
to this requirement. Some felt that the
other than "coercive" should be used
(e.g., "range of programs" and "variety of
servers"), A large number of commenters felt
that "coercion" carried negative con-
notations and suggested that the concept be
modified so that the idea of legal action was
plausible. It is important that the
coercion and damaging placements were made
in an effort to redress the wrong done
against the above concern. With respect to
these concerns, the overriding rule is that
such child's placement must be determined
adequately and be based on his or her individu-
ally educational program.

With regard to concern about the harm-
ful effect of placing handicapped children in
regular classes, the analysis of the section
304 regulations indicates that "such an
placement would not be appropriate to the
handicapped child cannot be made in such a
placement. Therefore regular placement would
not be appropriate to the handicapped child.

Response: A new provision will which requires States
and local educational agencies to utilize
nonclassroom-based, early childhood develop-
ment programs for 3-6 year old handicapped

and damaging placements

(46 CFR Part 94—Appendix, paragraph 26)

Comment: Under the current language of
this provision, the focus is on placements
which are "aimed solely at assuring maximum
appropriate mainstreaming."

Response: No change was made in the
section. The comment is to be interpreted
that the focus is on placements which are
"aimed solely at assuring maximum
appropriate mainstreaming."

and damaging placements

(112A.430)(B))

Comment: Commenters asked that the
exemptions concerning the notice requirement be
deleted as excessive.

Response: No change has been made. The
Office of Education believes the provisions
require that States provide necessary infor-
mation to parents to make a determination
about the type of information considered about
handicapped children to meet the requirements of this
part.

PUBLIC PENNSYLVANIA

Comment: Commenters requested that
this section be expanded to require that ac-
sess to records be given in no case less than
48 hours after the request, but they also
suggested that the provision be
revised to educate education programs or any bar-
rest when a child was removed from the
parent to inspect the record. A com-
ment of this kind would make sure that
information could be made available to the
agency had not been made after all 48 days

Response: Language has been added to
calls the concern that an agency may request
with a request for access before any notice
requesting an evaluation and an individual
and damaging placement.

This will help insure that interested
parents have access to their child's edu-
cation records.

The 48-day time limitation is not subject
to the prescription the commentator
feared. This language is from the Family Ed-
ucational Rights and Privacy Act, section 430
of the General Education Provisions Act
specifically section 430.11 (A), to which
these regulations are tied by statute.

(46 CFR Part 94)

Comment: A comment was filed that the
first copy of a record should be given free upon
request.

Response: No change has been made. The
policies against charging a fee if it would
effectively prevent the parent from inspect-
ing and reviewing the record is based on a
requirement in the Family Educational
Rights and Privacy Act, to which these regula-
tions are limited by statute (section 430

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(21)(C). Agencies may, of course, adopt policies of making copies available free of charge and be required to do so under the Privacy Act, but that does not, of course, impose a duty on the agencies.

IV. Standards Procedures (5 l.1657)

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

Response: The section states that the procedure under 19.22.22 (the hearing procedure in the regulations for the Family Educational Rights and Privacy Act) be used. Section 19.22.22 states that the hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

Comment: (1) Commenter requested clarification:

Response: The commenter is encouraged but not required.

ALLOWABLE COSTS (5 1.1658)

Comment: A number of commenters requested that the allowable costs for administering funds be raised and that provisions be added to allow educational agencies to use funds for administrative costs.

Response: No change has been made. The Office of Education believes that it is an appropriate time to discuss these issues with the State educational agency to use its funds for specific purposes.

Comment: Commenters requested that the regulations for administering funds be raised and that provisions be added to allow educational agencies to use funds for administrative costs.

Response: No change has been made on the State limit as it is a statutory limitation.

Comment: Commenters requested that the regulations for administering funds be raised and that provisions be added to allow educational agencies to use funds for administrative costs.

Response: No change has been made. The Office of Education believes that it is an appropriate time to discuss these issues with the State educational agency to use its funds for specific purposes.

State Advisory Panels (51.1659)

Comment: One commenter requested that local panels be required.

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

MEASURABLE (51.1661)

Comment: A substantial number of commenters requested, in addition to the list of representatives to be included on the panel, including professional groups, legal advocacy groups, and representatives of State and local agencies. Some commenters suggested that handicapped individuals or their parents may make up specific percentages of the panel.

Response: A panel has been added to the list of representatives to be included on the panel. The new panel will be comprised of individuals with disabilities and their parents. The panel will include at least one person who is a handicapped individual and at least one person who is a parent of a handicapped individual.

STATE EDUCATIONAL AGENCY RESPONSIBILITIES

Proposals on State educational agency responsibilities have been developed for implementation. These proposals include the establishment of a State educational agency responsibilities that are similar to those of Federal educational agencies.

Comment: Commenters requested additional funding for implementing the regulations for the State educational agency responsibilities.

Response: A proposal has been developed to add funding for implementing the regulations for the State educational agency responsibilities. The proposal includes funding for the implementation of the regulations for the State educational agency responsibilities.
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Comment: Requirements of the regulations provide that public members of the Board of Education 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 hardship.

SUBPART O—ALLOWANCES FOR PERSONNEL REPORTS

This major section of Subpart O is entirely statutory; therefore, there are no comments or explanations which is to be inserted.

REPORTS—ANNUAL REPORT OF CHAIRMAN

The following comments were received regarding the annual report by the States of the number of children receiving special education services. This report is the basis for each State's allocation of funds under Part B and serves as a mechanism for the Commissioner to meet one of his reporting requirements to Congress under section 611 of the Act. Some comments recommended changes toward the accomplishment of these reports. The data, however, remains minimal except where further explanation seemed to be useful.

AMOUNT OF INFORMATION REQUIRED IN REPORT

Comment: Comments varied in their views on what information should be included in the report. It was suggested that additional information could be called for to complete additional purposes. Objectives were made to be on a state by state reporting basis. There was a marked change in disability category, and for reporting the 5-2 year old population. On the other hand, some comments recommended that additional categories be added to the report, particularly for deaf-blind children and for multihandicapped children.

Support: Two categories of handicapped children have been added to the report—those for mental retardation and those for deaf-blind children. These terms are defined in section 309. A number of other changes have been made on the amount of information to be included.

The State's disability categories should help to insure that no handicapped child is omitted from the list. The State's allocation will not have to decide in which of two or more disabilities a particular child is multihandicapped. The changes conform to existing reporting requirements used by the States.

The annual report of children serves as a mechanism needed to determine certain States' allocations and to assure Congress of the reporting requirements under the Act. Under section 611 of the Act, allocations are based on the number of handicapped children which each State reserves special education and related services. Compliance with requirements such as "least restrictive environment" will be achieved through other mechanisms. Insuring 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 expected in the preamble to the proposed rules published in the Federal Register on September 8, 1978, the report requires certain information to be included in the Commissioner to carry out the Act. (See 41 FR 27751.) Comments that the commissioner is concerned about the possible harmful effects for "related" children, the Act requires that the Commissioner report a substantial amount of information to Congress by disability category. For this reason, and for the other reasons stated in the September 8, 1978, Federal Register, there appears to be no viable alternative to requesting the categories in the States annual reports. The various disability categories, as well as the reporting requirements as used in these are, and in the Commissioner's report to the Congress, are statutory.

What May Be Considered

Comment: Commentators disagreed as to whether handicapped children should be counted if their educational service is provided away from school or from Private services or from Federal funds (such as children living on military bases). Some thought that only practically-located special education should be counted. While others argued that since all children have a right to a free appropriate education the personnel from a non-educational agency (other than the person) should not matter. However, no criteria have been added as determinations will be made on a case-by-case basis.

APPENDIX B—INCOME TO 21A ADMINISTRATION

See: Monitoring.

Annual program plan requirements—II 12A.1—113; 12A.134; 12A.159; 12A.161; 12A.162; 12A.163.

Certifications of State authority—12A.112.

Direct Service by State educational agency—12A.134.

Local application requirements—12A.122; 12A.123.

Local education agency definition—12A.5.

State administrative support—12A.5.

Annual program plan requirements—I 12A.147.

General requirements—I 12A.480.I2A.663.

APPROVAL OF INCOME TO 21A ADMINISTRATION

Annual program plan coreamt.

APPENDIX C—INCOME TO 12A ADMINISTRATION

See: Monitoring.

Annual program plan requirements—12A.1—113; 12A.134; 12A.159; 12A.161; 12A.162; 12A.163.

Certifications of State authority—12A.112.

Direct Service by State educational agency—12A.134.

Local application requirements—12A.122; 12A.123.

Local education agency definition—12A.5.

State administrative support—12A.5.

Annual program plan requirements—I 12A.147.

General requirements—I 12A.480.I2A.663.

AGGREGATION

Annual program plan condition of assistance—12A.110.

Application by Federal educational agency of condition of assistance—12A.125.

Complementary applications—12A.131.

Count of children—See Reports.

Certification of States—See Reports.

State agency accountability—See Reports.

Formulas—12A.704-12A.707.

Qualifications—12A.704.

The State—12A.130.

Outlying areas—12A.710.

Recovery for misallocated children—12A.141.

State allocations—12A.710-12A.716.

107A.100.

Local allocations—12A.710.

107A.100.

107A.100.

107A.100.

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Individualized education programs—121a-440.
Personal development—121a-390.
Private school children—121a-600.

STATE AGENCY PROGRAMS

Monies—121a-340.

EXCESS COSTS

General—121a-425-121a-490.
Local application requirements—121a-295.
Not applicable to state educational agency—121a-300.
Priorities—121a-320-121a-330.

FULL EDUCATIONAL OPPORTUNITY GOAL

Annual program plan requirements—121a-110.
Annual program plan requirements—121a-110.

EMERGENCY CHILDREN

Defined—121a-4.

Writings

See: Confidentiality of information.

Dissemination

See: Dissemination, location, evaluation.

SCHOLARSHIPS

Annual program plan requirements—121a-340.

REIMBURSEMENT

Annual program plan requirements—121a-340.

PRIVATE SCHOOL CHILDREN

Authority—121a-340.

COMPLAINTS

State educational agency procedures—121a-600.
See: Hearings, comparison of services.

Local application requirements—121a-215.
Definitions—121a-190.
General requirements—121a-190.
Local application requirements—121a-215.

CONFIDENTIALITY OF INFORMATION

Annual program plan requirements—121a-110.
Definitions—121a-290.
General requirements—121a-290-121a-372.
Local application requirements—121a-290.

EQUALIZING SERVICES

See: Applications of local agency.

Annual report of children served—121a-760-121a-790.
Allocation—121a-770.
State entitlements—121a-770-121a-790.
Local educational agency entitlement—121a-770.
Outlaying area entitlements—121a-770.

Public notice

See: Confidentiality of information.

Evaluation.

Hearings.

Procedures for parents and children—121a-300-121a-310.

EDUCATION

See: Free appropriate public education.

Individualized education program.

Physical education.

Special education.

Related services.

EVALUATION

Advisor panel function—121a-600.
Annual program plan requirements—121a-110.

Education programs—121a-140.
Handicapped children—121a-300.

Hearing—see Hearing.

Independent educational evaluation—121a-400.

Identity of achievement—121a-420.

Notice required—121a-420.

Protection—121a-190.

Private school children—121a-600.

URBAN CHILDREN

Application form—121a-600.

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State Application Form—121a.16.

Annual program plan requirements—121a.174.

Cooperative arrangements—121a.40.

Parents may examine—121a.50. Parents not participating in meetings—121a.34.

Related Services


Annual report of children served—121a.175-121a.784.

Annual application requirements—121a.232; 121a.298.

State Surveys—121a.825.

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

PART 121m—INCENTIVE GRANTS

Sec.

121m.1 Scope: purpose.

121m.3 General provisions. Guidelines.

121m.3 Eligibility.

121m.4 Application.

121m.5 Application contents.

121m.6 Amounts of grant.

121m.7 Participation by children not counted under Part B of this Act.

121m.8 Excess costs.

121m.9 Administration.

121m.10 Annual evaluation report.


§ 121m.1 Scope: purpose.

(a) This part applies to States under section 619 of the Act.

(b) The Commissioner awards a grant to each State which provides special educational and related support services to handicapped children aged three, four, or five.

(c) The State shall use funds provided under this part to give special educational 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.

20 U.S.C. 1419 (c) .

§ 121m.2 General provisions. Guidelines.

Assistance under this part is subject to the requirements in Parts 100, 106b, 106c, 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 121a of this chapter; and

(b) The State provides special educational and related services to any handicapped children aged three, four, or five.

20 U.S.C. 1419. (a) .

§ 121m.4 Application.

To receive funds under this part, a State must submit an application to the Commissioner through its State educational agency.

20 U.S.C. 1419. (b) .

§ 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 aged three through five. These goals and objectives must be consistent with the State’s full educational opportunity goal under § 121a.125 of this chapter.

(b) A description of the objectives to be supported by the grant in sufficient...
detail to determine what will be achieved with the grant.

(c) A description of the activities to be supported by the grant. The activities must be related to the objectives under paragraph (b) of this section and must be described in sufficient detail to determine how the grant will be used.

(d) A description of the impact the proposed activities will have on handicapped children ages three through five. This description must include evidence that the proposed activities are of sufficient size, scope, and quality to warrant the 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 directly. 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 activities they will carry out, and the reason for selecting these agencies.

(f) The dollar amounts that will be spent for each major activity described.

(g) A description of the procedures the State will use to evaluate the grants to which the activities meet the objectives described under paragraph (b) of this section.

(20 U.S.C. 1412(a)(1)).

§ 121m.6 Amount of grant.

(a) The amount of a grant is $300 multiplied by the average number of children ages three through five counted during the current school year under §§ 121a.700—121a.706 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.

(20 U.S.C. 1412(a), (b)).

§ 121m.7 Allowable expenditures.

(a) The State educational agency may use funds under this part to give special education and related services to handicapped children ages three through five who are not counted under §§ 121a.700—121a.706 of this chapter if the State educational agency ensures that these children have all of the rights afforded under part 121a of this chapter.

(b) The State educational agency may use up to five percent of its grant for the costs of administering the funds provided under this part.

(20 U.S.C. 1412(e)).

Comment: In carrying out the provisions of this part, the activities are considered particularly appropriate for the use of these funds: (1) Providing services with staff development information; (2) assessing parents in the understanding of the special needs of their handicapped child; (3) proving parent counseling and parent training, where appropriate, to enable parents to work more effectively with their children; (4) proving early intervention at age three; (5) proving evaluation essential to the delivery of services; (6) proving speech therapy, psychological therapy, or physical therapy.

(20 U.S.C. 1412(e)).

§ 121m.8 Excess funds.

(a) If local or State funds are available to pay for the education of non-handicapped children of the same age as the handicapped children served with funds under this part, funds equal to that amount must also be made available for these handicapped children.

(b) If no local or State funds are available for nonhandicapped children of the same age, funds under this part may be used to pay for all of the costs directly attributable to the education of the handicapped children.

(20 U.S.C. 1412(e)).

§ 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.

(20 U.S.C. 1412(a)).

§ 121m.10 Annual evaluation report.

(a) Within 90 days after the end of the grant period, the State educational agency shall submit a report to the Commissioner on the activities carried out under this part during that period.

(b) The report must contain:

(1) The results of the evaluation under § 121m.5(a).

(2) In brief narrative form, the impact that these funds have had on the State's educational services to handicapped children ages three, four, and five.

(20 U.S.C. 1412(c)).
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

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.

Printed by authority of the State of Illinois
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
<table>
<thead>
<tr>
<th>Nature of Complaint in Descending Frequency Order</th>
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<tbody>
<tr>
<td>Placement^2 (Art. 9)</td>
<td>119</td>
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<tr>
<td>Appropriateness</td>
<td>40</td>
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<tr>
<td>Lack of</td>
<td>23</td>
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<tr>
<td>All other</td>
<td>56</td>
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<tr>
<td>Transportation (Art. 13)</td>
<td>16</td>
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<tr>
<td>Financial responsibility (Art. 8.07 #5)</td>
<td>15</td>
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<tr>
<td>Miscellaneous</td>
<td>12</td>
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<tr>
<td>Denial of related services (Art. 5)</td>
<td>9</td>
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<tr>
<td>Failure to comply with administrative order (Art. 10.24)</td>
<td>4</td>
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<tr>
<td>Expulsion or suspension of special education student (Art. 2.04 #1)</td>
<td>4</td>
</tr>
<tr>
<td>Disagreement with teaching practices</td>
<td>3</td>
</tr>
<tr>
<td>Graduation of special education student (Art. 3.03)</td>
<td>3</td>
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<tr>
<td>Evaluation (Art. 9)</td>
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<tr>
<td>Due Process (Art. 10)</td>
<td>3</td>
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<td>Parents' Rights (Art. 9)</td>
<td>3</td>
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<tr>
<td>Accessibility (Section 504 of Rehab. Act)</td>
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<tr>
<td>Communication between special education program and parent</td>
<td>2</td>
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<tr>
<td>Delay in provision of services (Art. 9.24)</td>
<td>2</td>
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^2All citations are from the Rules and Regulations to Govern the Administration and Operation of Special Education.
APPROVAL SHEET

The dissertation submitted by Nancy Hablutzel has been read and approved by the following committee:

Dr. Samuel T. Mayo, Director
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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

12/1/82
Date

Samuel T. Mayo
Director's Signature